Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 74-942

FRANK L. RIZZO, et al.,

v.

Petitioners,

GERALD G. GOODE, et al.,

Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,

v.

Petitioners,

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS.

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FRANK L. RIZZO, ET AL.,

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HONORABLE JAMES H. J. TATE,
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COUNCIL OF ORGANIZATIONS ON PHILADELPHIA
POLICE ACCOUNTABILITY AND
RESPONSIBILITY, ET AL.,

Respondents.

—

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

———

BRIEF FOR RESPONDENTS.

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COUNTER STATEMENT OF THE QUESTION PRESENTED.

Did the District Court abuse its equitable powers in requiring municipal officials to establish adequate citizen complaint procedures within the police department in order to supervise and control police conduct where the trial record compellingly demonstrated frequent constitutional violations by policemen and a departmental policy of disregarding and minimizing such violations?

COUNTER STATEMENT OF THE CASE.

Introduction.

The issue before this Court is the propriety of the injunctive relief accorded by the District Court, and approved by the Court of Appeals – relief which was explicitly predicated upon an uncontested finding of "recurring and otherwise predictable violations of the constitutional rights of [Philadelphia] citizens" by members of the Philadelphia Police Department (A 128a-29a, 357 F. Supp. at 1320).[1] The relief was further based upon a finding of official acquiescence by petitioners (hereinafter "defendants") in such violations as reflected in the clear *policy* of the named defendants to do "little or nothing" with regard to their remedy or prevention (A 13a, 25a, 38a-39a, 62a, 126a; 357 F. Supp. at 1319).

1. Page references to the Appendix in this Court are designated by the letter "A" and appropriate page number. Page references to the Appendix to the Petition for Writ of Certiorari are designated as "App. Cert. Pet." and appropriate page number. All references to the opinion of the District Court will be both to the Appendix (A 65a-130a) and, for convenience, the reported decision, 357 F. Supp. 1289 (E. D. Pa. 1973). Similarly, references to the opinion of the Court of Appeals will be both to the Appendix to the Petition for Writ of Certiorari (1a-19a), and to the reported decision, 506 F. 2d 542 (3d Cir. 1974). The final judgment is set forth in the Appendix to the Petition for Writ of Certiorari (20a-23a).

Two separate civil rights actions, *Goode v. Rizzo* (hereinafter "*Goode*") and *COPPAR*[2] *v. Tate* (hereinafter "*COPPAR*"), were brought pursuant to 42 U. S. C. § 1983 by different respondents (hereinafter "plaintiffs") on behalf of minority citizens and residents of the City of Philadelphia seeking various forms of equitable relief to eliminate and prevent the recurrence of ongoing violations of plaintiffs' constitutional rights permitted, condoned and acquiesced in by defendants. The complaint in *Goode* was filed on February 17, 1970 by three individual plaintiffs on behalf of themselves and the class of all residents of Philadelphia. Plaintiffs alleged that they had been unlawfully assaulted and otherwise abused by certain named police officers, that these officers were biased against black and other minority groups and habitually violated the constitutional rights of private citizens; that the proclivities of these officers were known to their superiors; that by failing to take appropriate disciplinary actions, the defendants, who were in control of the supervision of the Police Department, acquiesced in and condoned these illegal and unconstitutional activities. Plaintiffs further alleged that the absence of adequate machinery for dealing with citizen complaints constituted persuasive but by no means the only evidence of official indifference to police abuses. Plaintiffs requested, *inter alia,* an injunction directed at reducing the instances of unconstitutional behavior. On May 12, 1970, the District Court entered an order permitting the case to be maintained as a class action on behalf of all residents of the City of Philadelphia and an included class of all black residents of Philadelphia pursuant to F. R. Civ. P. 23(b)(2) (A 24a).

2. COPPAR is an acronym for Council of Organizations on Philadelphia Police Accountability and Responsibility.

The complaint [3] in *COPPAR* [4] was filed on September 3, 1970 by twenty-one individuals and four organizations. Plaintiffs alleged widespread and systematic violations of constitutional rights of citizens by various members of the Philadelphia Police Department with the express or tacit approval of their superiors. Contrary to the statement in defendants' Brief in this Court, plaintiffs *specifically alleged supervisory indifference by defendants.*[5] Plaintiffs

3. In advance of the hearings in *COPPAR*, plaintiffs provided a list of witnesses and a brief description of each incident charged. The Court of Appeals stated "this may properly be considered an amendment to the complaint and was so treated by the district court." (App. Cert. Pet. 8a, 506 F. 2d at 546). Many of these additional parties testified in the District Court. Among the additional parties included in plaintiffs' list were the following: Raymond Ragland (A 89a-90a, 357 F. Supp. at 1302); Howard Schwartz (A 90a-91a, 357 F. Supp. at 1302-3); Kenneth Lassiter (A 91a-93a, 357 F. Supp. at 1303-4); Helen Peurifoy (A 93a-95a, 357 F. Supp. at 1304); Jean Thomas (A 96a-97a, 357 F. Supp. at 1305-6); Oliver and Linda Locke (A 107a-9a, 357 F. Supp. at 1310-11); Thomas Lodico (A 109a-10a, 357 F. Supp. at 1311-12); Mark Soto and Jerry Serrano (A 111a-13a, 357 F. Supp. at 1312-13); Albert Boccuto and Anthony Dignetti (A 114a-16a, 357 F. Supp. at 1314); Mr. and Mrs. Leon Brown (A 117a-18a, 357 F. Supp. at 1315-16); Edward Smalley (A 117a-18a, 357 F. Supp. at 1315-16).

4. Defendants' description of the *COPPAR* case in their Brief attempts to discredit the case in this Court's eyes. For example, defendants state that the Black Panther Party had chosen Philadelphia to be the host city for a convention "which was to bring some six thousand advocates of violent and non-violent political revolution into the City." (Brief for Petitioners 9, hereinafter "Pet. Br."). In reality, approximately 500 persons attended an entirely peaceful convention, many of whom were long-term residents of Philadelphia.

5. Defendants contend that they were not on notice that police disciplinary procedures were an issue in the *COPPAR* case (Pet. Br. 13 n. 14). However, the complaint in *COPPAR* expressly alleged official acquiescence in and toleration of police misconduct through failure to take any disciplinary action against offending police officers (A 45a-46a, ¶¶ 36, 38, 39), and at trial plaintiffs produced evidence concerning the complaint procedures (A 67a, 357 F. Supp. at 1291). Defendants did not produce any evidence in response despite the fact that the hearings were held over a

sought a temporary restraining order, preliminary injunction, permanent injunction enjoining future constitutional violations and appointment of a receiver for the Police Department. On September 4, 1970, the District Court issued a temporary restraining order enjoining the defendant police officials and all police officers from violating the constitutional rights of the plaintiffs or the class of plaintiffs (A 67a, 357 F. Supp. at 1291). The order expired on November 2, 1970.[6]

Defendants in both cases were the city and police officials admittedly charged with the responsibility of supervising, controlling and disciplining the Police Department,[7] and each was named a defendant in his official

5. (Cont'd.)
four and one half month period and there were lengthy periods between hearing sessions during which defendants could have easily assembled evidence on these matters. Moreover, defendants, who were represented by the same counsel in both cases, were on notice since January 19, 1971, well before the March 14, 1973 opinion and order were issued, that the District Court intended to consolidate the *COPPAR* case with *Goode* for purposes of relief (*COPPAR* Record 2175). Furthermore, in January, 1973, the District Court afforded defendants the opportunity to reopen the hearings in order to produce additional relevant evidence and defendants declined to do so (A 120a n. 1, 357 F. Supp. at 1317 n. 1).

6. *COPPAR* Record 326-27. The order provided in relevant part:

> "The defendant police officials and all police officers in Philadelphia having notice hereof, are restrained and enjoined, until further hearing in this matter from violating the rights of the Plaintiffs or any member of the class of Plaintiffs guaranteed to them under the Constitution of the United States or directly or indirectly causing any such violation; and particularly are restrained and enjoined from entering, without warrant or probable cause, the homes of Plaintiffs and members of the class of Plaintiffs, or harassing or arresting said class members in violation of their rights as citizens. Nothing in this order shall be construed as limiting in anyway the authority of the police to enforce the law in a lawful manner, and to exercise and defend their own rights as citizens." (App. Cert. Pet. 229a).

7. The complaint in *Goode* named the following elected and appointed officials of the City of Philadelphia as defendants and alleged each held the following duties and responsibilities:

capacity. Defendants in both cases were represented by the same counsel (A 65a, 357 F. Supp. at 1290). Because

7. (Cont'd.)

James H. J. Tate, Mayor,

"responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries;"

Fred T. Corleto, Managing Director,

"is charged under Section 5-100 of the Philadelphia Home Rule Charter (hereinafter 'Charter') with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor, appoints the Police Commissioner of the City of Philadelphia."

Frank L. Rizzo, Police Commissioner,

"pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director. He also has duties of supervision and control over activities of the Police Department. Pursuant to Charter Section 5-200(b), the Police Department "shall . . . *discipline* the Philadelphia Police." (emphasis added).

Robert G. Selfridge, Deputy Police Commissioner, "in charge of the activities of uniformed police and exercises powers of supervision and control over uniformed police officers in the City of Philadelphia."

William Murphy, Chief of Highway Patrol,

"exercises powers of supervision and control over its members."

Defendants admitted each of these allegations in their answer (A 13a, *Goode* Complaint, ¶¶ 7-11; A 25a, Answer of Defendants, ¶¶ 7-11), and each of these admitted allegations became part of the evidence before the District Court. *Goode* Record 5-6; A 68a-69a, 357 F. Supp. at 1292. By order of the District Court of September 11, 1973, the individuals who had succeeded to these official positions were substituted as defendants.

The complaint in *COPPAR* named several of the same elected and appointed officials of the City of Philadelphia as defendants and alleged each held the following duties and responsibilities:

James H. J. Tate, Mayor,

"is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries."

Fred T. Corleto, Managing Director,

"is charged under Section 5-100 of the Philadelphia Home Rule Charter (Hereinafter referred to as 'Charter') with the exercising of supervision over all activities of those departments

of the substantial identity as to subject matter, the Honorable John P. Fullam, at the conclusion of the *COPPAR* trial, consolidated the two cases insofar as the appropriate relief was concerned (A 65a, 357 F. Supp. at 1290; *COPPAR* Record 2175). No objection to consolidation was raised by defendants (*COPPAR* Record 2175-76).

The Nature of the Record.

The testimony presented at trial, in light of the importance of the subject matter, the conflicting interests, and the subtlety of the institutional issues involved, was of necessity voluminous and complex (A 65a-66a, 357 F. Supp. at 1291). During the two trials, there were twenty-one days of hearings during which approximately 250 witnesses [8] testified.[9] For present purposes, the

7. (Cont'd.)

whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor appoints the Police Commissioner of the City of Philadelphia."

Frank L. Rizzo, Police Commissioner,

"pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director and the Mayor of Philadelphia. His duties include supervision and control over activities of the Police Department."

Defendants Tate, Corleto and Rizzo admitted each of these allegations and the District Court found they had these responsibilities (A 38a-39a, *COPPAR* Complaint, ¶¶ 13-17; A 62a, Answer of Defendants, ¶ 8; A 68a-69a, 357 F. Supp. at 1292). The District Court by order of May 14, 1973 directed that appropriate amendments be made to the caption to reflect changes in personnel (A 131a, 357 F. Supp. at 1321).

8. The witnesses in the two cases are broken down as follows:

	Plaintiffs' Witnesses	*Plaintiffs' Experts*	*Police Officers*	*Defendants' Non-Police Witnesses*
Goode	41	5	13	12
COPPAR	55	3	95	13

9. In addition to the evidence presented in the *Goode* and *COPPAR* cases, Judge Fullam took cognizance of another class action suit pending before another judge of the District Court

record may be divided into two separate but interrelated

9. (Cont'd.)
against essentially the same defendants. *Alexander v. Rizzo*, Civil No. 70-992 (E. D. Pa., Dec. 18, 1972). The complaint in the *Alexander* case alleged discrimination against blacks by Philadelphia police through the practice of widespread arrests "for investigation" without issuance of a warrant, without probable cause and without criminal charges being filed against the individuals arrested and detained. The action resulted in a consent decree granting injunctive relief (A 66a-68a, 357 F. Supp. at 1291-92).

Moreover, the principal defendants in this case have been before the federal court on other occasions charged with violating the constitutional rights of citizens. *E.g., Commonwealth of Pennsylvania v. O'Neill*, 348 F. Supp. 1084 (E. D. Pa. 1972), *modified*, 473 F. 2d 1029 (3d Cir. 1973) (preliminary injunction issued by Judge Fullam against city and police officials to correct racially discriminatory hiring and promotion policies of the Philadelphia Police Department. The court found, *inter alia*, that "[t]he record shows clearly that, since the Police Department was given the final responsibility for hiring policemen, in mid-1969, there has been a dramatic decrease in the numbers and precentages of blacks hired as policemen." *Id.* 1104); *Leslie Tobin Imports, Inc. v. Rizzo*, 305 F. Supp. 1135 (E. D. Pa. 1969) (finding by the court that repeated raids by police of store selling jewelry, incense, posters, etc. and seizure of alleged obscene material without prior judicial hearing as to whether the material was obscene "fell far short of constitutional demands." Prosecutions of store employees arising out of the raids were all dismissed by the state courts. The court issued an injunction directed against defendant Rizzo, who was then Police Commissioner, to prevent such conduct by his subordinates in the future.); *Hughes v. Rizzo*, 282 F. Supp. 881 (E. D. Pa. 1968) (finding by the court of repeated mass arrests and harassment by police of "hippies" frequenting a public park in a wealthy center-city residential area. No criminal charges were filed against those arrested and the court concluded that the arrests and continued harassments were "totally unjustified". *Id.* 883); *Heard v. Rizzo*, 281 F. Supp. 720, 733 (E. D. Pa.), *aff'd mem.*, 392 U. S. 646 (1968) (although denying plaintiffs' claim that certain Pennsylvania criminal statutes were unconstitutionally vague and overbroad, a three judge court gave recognition to the extensive evidence presented concerning violation of plaintiffs' First Amendment rights and the use of excessive force by police).

Another case involved the flagrant violation by numerous police officers and their superiors of an explicit restraining order against arrest and removal of peaceful demonstrators with anti-war signs at Independence Hall during a speech by former President Nixon under circumstances found by the court to be both deliberate

foci: first, testimony as to approximately forty-one [10] incidents involving plaintiffs and other members of the general public and approximately 150 individual police officers which caused the District Court to conclude that the level of police abuses was "unacceptably high," (*e.g.*, A 67a, 130a, 357 F. Supp. at 1291, 1321) including, an identification and analysis of certain kinds of citizen-police encounters which may generally, and predictably, give rise to police assaults, unlawful searches and wholly improper "investigative" arrests (*e.g.*, A 122a, 124a, 357 F. Supp. at 1317-18); and second, "a mass of evidence" (A 67a, 357 F. Supp. at 1291) dealing with the defendants' indifference and inaction with regard to preventing recurring and predictable abuses and protecting plaintiffs' class from the consequences thereof (A 122a-25a, 357 F. Supp.

9. (Cont'd.)
and systematic. *Farber v. Rizzo*, 363 F. Supp. 386, 395 (E. D. Pa. 1973) ("The facts established at the hearing demonstrate beyond any doubt that the Philadelphia Police Department engaged consciously and intentionally in conduct which was violative of the TRO. These established facts illuminate a course of conduct by which the police denied entrance to the [Independence] Mall to anyone they encountered with a sign and harassed those in the Mall who had signs . . . or opposed their actions vociferously. . . . This conduct began before the TRO was signed and continued unabated after the police, both the officers stationed around the Mall and their superiors . . ., received notice of the Court's order." *Id.* 395.)

10. In reality, there were significantly more than forty-one incidents presented. In a number of cases, the District Court made findings of facts about multiple, separate and distinct constitutional violations but subsumed them under one "incident" because of the proximity of time or place. *E.g.*, Stop and Frisk Incidents of September 1, 1970, A 104a, 357 F. Supp. at 1309 (3 separate illegal stops and frisks by police officers involving 45 black youths); Locke and Perry Incident, A 107a-9a, 357 F. Supp. at 1310-11 (initial incident, followed 3 days later by two searches; unrelated illegal arrest two months later); Mr. and Mrs. Leon Brown, and Edward Smalley, A 117a-18a, 357 F. Supp. at 1315-16 (two unrelated searches on same day); 23rd and South Streets Incident, A 101a-3a, 357 F. Supp. at 1307-8 (detention of at least 27 blacks "for investigation").

at 1317-19). It should be noted that in evaluating the evidence presented, Judge Fullam gave the police "the benefit of the doubt" in resolving conflicts and judging credibility and accorded defendants "the full benefit of the presumption that the police officers acted properly." (A 68a, 80a, 357 F. Supp. at 1292, 1298; *see also* A 83a, 108a, 357 F. Supp. at 1299, 1311).

Evidence as to Overt Unconstitutional Police Conduct.

Ten [11] of the incidents referred to were presented as part of the plaintiffs' case in *Goode*. The evidence presented was expressly limited to incidents in which Officer Anthony DeFazio and/or Officer John D'Amico, both members of the Highway Patrol Division of the Philadelphia Police Department, took part. Of these ten incidents, six [12]

11. There has been some confusion throughout this case about the precise number of "incidents" involved. For example, defendants stated in their brief that there were only nine incidents in the *Goode* case (Pet. Br. 8). The District Court stated that evidence was presented of "10 specific instances of alleged violations." A 67a, 357 F. Supp. at 1291. Similarly, the defendants understated the number of incidents in the *COPPAR* case (Pet. Br. 12). The District Court made findings of fact concerning 28 incidents, but listed only 27. Two incidents were enumerated as number 5 (*See* A 91a and 93a, 357 F. Supp. at 1303 and 1304). In addition, the District Court made no findings of fact concerning three other incidents. Two of these involved searches of named plaintiffs' homes. The third was the Harris Sokoloff Incident (*COPPAR* Record 771, 786, 2081, 2097, 2114), for which no findings were made because it occurred after November 1, 1970, the cutoff date agreed upon for testimony (*COPPAR* Record 2174).

12. Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; Gerald G. Goode, A 75a-78a, 357 F. Supp. at 1295-97; Ballow Incident, A 78a-79a, 357 F. Supp. at 1297; Herbert Brown, A 80a, 357 F. Supp. at 1297-98; Bernard Sisco, A 80a-83a, 357 F. Supp. at 1298-99; Joseph Reas, A 83a-84a, 357 F. Supp. at 1299-1300.

The first incident, Roy Lee Shaw, occurred on March 10, 1969. The last of the six, Ballow Incident, occurred on June 20, 1970. Thus, the six incidents involving misconduct in the *Goode* case took place over a span of fifteen months. When considering the frequency of misconduct demonstrated in *Goode*, it is important to note that the incidents presented were specifically limited to ones in which Officers DeFazio and/or D'Amico were involved.

were introduced to demonstrate, and the District Court found, constitutional violations and instances of misconduct on the part of the two police officers and others, including illegal arrests, illegal searches and a number of instances of the administration of summary punishment.

For example, in the Gerald Goode incident (A 75a-78a, 357 F. Supp. at 1295-97), Officers DeFazio and D'Amico pursued and stopped the car in which plaintiff Goode, then a graduate student at the University of Pennsylvania, was a passenger and forced him out of the car because Goode had criticized the officers' conduct in frisking a black man at a corner several blocks away. When he asked for an explanation for the police action, Goode was struck across the face with a blackjack and later required multiple stitches.[13] He was arrested and held overnight in jail on charges of assault and battery on an officer, resisting arrest and breach of the peace. All charges against Goode were later dismissed. The District Court concluded "it is entirely clear that there was no probable cause for arresting Mr. Goode, and that the conduct of the police was in flagrant violation of the law and the Constitution." (A 78a, 357 F. Supp. at 1297).

13. The driver of the car was the wife of a Deputy District Attorney. With respect to the beating of Goode, she testified:

Q. All right, did the officers succeed in getting the rear door unlocked?

A. Yes, they did.

Q. Then what happened?

A. They pulled Gerald Goode out of the car. Oh, first before they pulled Gerald Goode out of the car, I remember them saying to him, after he said, "Are you sure you have the right to do this?" or "What are you doing?" They said, "Don't give me any of that intellectual shit."

• • •

Q. And then what happened?

A. They started hitting him and first he was facing them and they hit him with a—what looked like a nightstick, and

The Roy Lee Shaw incident (A 74a-75a, 357 F. Supp. at 1294-95) involved the arrest of a sixteen year old black high school student who was stopped by Officer DeFazio after purchasing a pack of cigarettes in a local store after school. The cigarettes possibly caused a bulge in his pocket although there was no police testimony concerning this incident (*See Goode* Record 34). When Shaw asked why he was being stopped, Officer DeFazio struck him in the head several times with a blackjack. Shaw then hit DeFazio with his fist and started to run away. DeFazio ran after him, drew his revolver and fired a shot at Shaw. Shaw stopped, DeFazio grabbed him, placed handcuffs on him and pushed him into the police car. DeFazio then proceeded to beat Shaw with a blackjack while Shaw was handcuffed inside the car. Other officers arrived at the scene, dragged Shaw out of the car and violently pushed him into the police wagon. Shaw's mother, having heard of the incident, arrived at the scene at this time and pleaded with the officers to stop hitting her son. One of the officers then threatened to hit her. When Shaw arrived at police headquarters, he was beaten again by officers with nightsticks. He was taken to a hospital where he received multiple stitches in his head (*Goode* Record 16-37, 43-53).[14] Judge Fullam concluded: "There was no

13. (Cont'd.)

then they turned him and put his hands up against my car, and they frisked him, and they kept on hitting him with the nightstick.

(*Goode* Record, Testimony of Mrs. R. Rotko, 248-49).

14. Mrs. Brown, who lived across the street from where the incident occurred and who did not know Shaw, testified that she saw Officer DeFazio stop and shove Shaw against a building and hit him in the head when the boy questioned why he had been stopped. She continued her testimony as follows:

A. And when the boy reached the fence which was at the end of the store, the officer pushed him against the fence, and he took his right foot and kicked the boy on his left, just about

basis for stopping Shaw in the first place, there was no probable cause to arrest him, and his arrest was illegal." (A 75a, 357 F. Supp. at 1295).

In the Joseph Reas incident (A 83a-84a, 357 F. Supp. at 1299-1300), a sixteen year old white male was attending a carnival in a parochial school playground in a largely white section of the city. He had not been engaged in any criminal or improper behavior. Reas and three other boys went to get a drink at the football field which was part of the school playground and saw a girl there whose face was bleeding. They asked the girl what happened but she was dazed and crying and did not answer. Someone then yelled "Cops" and three boys started running. Reas did not start to run until he saw officers coming toward him with nightsticks raised over their heads. He was then hit on the back of the head twice and fell to the ground. When he tried to turn his head to see who

14. (Cont'd.)

where his ankle was, I guess to try to make him lose his balance, and I left the window again.

By the time I got my coat and got downstairs, the officer had him to the car, and he was in the car. The boy was handcuffed, with his hands behind him, and the boy was lying on his face, and the officer was beating him by the time I got downstairs and across the street.

• • •

A. When I went across the street, I stood on the steps and about that time there was another police car was there [*sic*], and they were beating him. He was on one side. He was on the—right opposite, right across in front of 2857. The officer there was on that side of the car. The other two officers came to the other side of the car and opened the door, and the boy was handcuffed there with his hands behind him on his face.

Q. In the car?

A. Yes.

Q. And what were they doing to him?

A. They were beating him. (*Goode* Record 60-62)

Other eyewitnesses also confirmed this testimony. (*Goode* Record, Testimony of Mrs. J. Berry 76-83; Testimony of Mrs. A. Tolliver 99-102; Testimony of Mrs. C. Ruffin 106-10).

had hit him, the officer struck him in the head again. With his head bleeding, Reas was placed in a police wagon, where he lost consciousness. He awoke in the hospital where he received several stitches and remained for two days. He was charged with inciting to riot but the charges were dropped almost immediately. Mrs. Reas' repeated requests of supervisory officers that they identify the officer who beat her son received no attention. No contrary testimony was given by any police officers concerning this incident (*Goode* Record 580-604).

Of the four other incidents presented at the *Goode* trial, two [15] involved racial and ethnic slurs, which although not constitutional violations in and of themselves, demonstrated the attitude of the officer involved and the knowledge of his superiors concerning this conduct and were presented for those purposes. The remaining incidents involved complaints by Officer DeFazio's neighbors made to his immediate superior officers. No action was taken by officials as to these complaints, which were "substantially uncontradicted" and raised "further serious questions about DeFazio's fitness for police work." [16] (A 86a, 357 F. Supp. at 1300).

The remaining thirty-one incidents were presented by plaintiffs in the *COPPAR* case. As to two incidents involving alleged violations of named plaintiffs' constitutional

15. Louis J. Reed, A 84a-85a, 357 F. Supp. at 1300; "Jew Bastard" Incident, A 85a-86a, 357 F. Supp. at 1300. Mrs. Reed, a named plaintiff, was the wife of a Philadelphia Common Pleas Court judge. A 84a-85a, 357 F. Supp. at 1300.

16. Serious question about DeFazio's fitness also arose from a finding by the Police Department psychiatrist that he was psychiatrically "unfit" for police duty. This examination, administered at the time of DeFazio's application for employment, was repeated 3½ months later resulting in his passing with a low rating. *Goode* Record 469-70; Exhibit P-28A to D.

rights, the District Court made no findings of fact.[17] As to sixteen [18] of the incidents, the District Court found violations of federally secured rights, including at least five police assaults, and eleven patently unlawful investigative arrests and detentions.

In the Johnson and Simon incident (A 105a-6a, 357 F. Supp. at 1309-10), for example, two black high school students were walking in front of one of the boy's homes. Two police officers, while driving past the youths, heard one of them say something which they could not decipher.

17. Tony Britt Incident, *COPPAR* Record 32; Gary McNeal Incident, *COPPAR* Record 27.

18. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Howard Schwartz, A 90a-91a, 357 F. Supp. at 1302-3; Kenneth Lassiter, A 91a-93a, 357 F. Supp. at 1303-4; Helen Peurifoy, A 93a-95a, 357 F. Supp. at 1304; Mary Blackwell, A 95a-96a, 357 F. Supp. at 1305; Black Panther Party Incidents, A 99a-100a, 357 F. Supp. at 1307; 23rd and South Sts. Incidents, A 101a-3a, 357 F. Supp. at 1307-8; Wilfredo Rojas, A 103a-4a, 357 F. Supp. at 1308-9; Johnson & Simon Incidents, A 105a-6a, 357 F. Supp. at 1309-10; Alaberti & Whelan Incidents, A 106a-7a, 357 F. Supp. at 1310; Locke & Perry Incidents, A 107a-9a, 357 F. Supp. at 1310-11; Thomas Lodico, A 109a-10a, 357 F. Supp. at 1311-12; Soto and Serrano Incident, A 111a-13a, 357 F. Supp. at 1312-13; Ellis Steward Incident, A 113a-14a, 357 F. Supp. at 1313-14; Boccuto & Dignetti Incidents, A 114a-16a, 357 F. Supp. at 1314; Brown & Smalley Incidents, A 117a-18a, 357 F. Supp. at 1315-16.

The opinion of the trial court summarizes the facts of these incidents, and, in some cases, does not explicitly add a finding of federal violations. However, in those cases, the facts, as found, reveal such violations, and, in at least two such incidents whose textual summary did not contain an explicit "federal violation" conclusion, the court, later in its opinion, characterized the activities of the police officers involved as a violation of the temporary restraining order entered at the inception of *COPPAR*. *Compare* textual discussion of Johnson & Simon and Ellis Steward incidents, A 105a-6a, 113a-14a, 357 F. Supp. at 1309-10, 1313-14, *with* discussion of the violated temporary restraining order at A 126a, 357 F. Supp. at 1319. Moreover, the trial court's findings with respect to the individual incidents must be considered in the light of its conclusion that the totality of evidence established that violations of the legal and constitutional rights of citizens by the police "do occur in an unacceptably high number of instances." (A 130a, 357 F. Supp. at 1321).

The officers turned their car around, stopped the boys, demanded to know what had been said, frisked them and asked for identification. Johnson produced his wallet which contained his identification and told the police that he lived in the house in front of which they were standing. Johnson's grandmother came out of the house and asked where the boys were being taken, but the police did not reply. Instead, they transported the boys to police headquarters to investigate "their identity." (*COPPAR* Record 485).[19] While there, one of the boys was struck on the chin by a police officer who stated he "did not like the boys' attitude." The youth was later charged with striking the policeman. The two youths were held for over three hours before one of them was permitted to see his mother. They were ultimately released some six hours after they were first picked up. After hearing evidence concerning this incident, Judge Fullam stated that there "can't possibly be any dispute about the virtual kidnapping of these two men." (*COPPAR* Record 507).

In the Locke incident (A 107a-9a, 357 F. Supp. at 1310-11), a five-month pregnant woman, who was dressed

19. One of the officers involved in the incident testified that he believed he had the right under police procedures to take an individual to the police station because the person did not have identification (*COPPAR* Record 488). With respect to this incident, he admitted under questioning by Judge Fullam that he knew where Johnson lived:

> THE WITNESS: The two males were there when we first pulled up. Nobody else was there. Then, as I stated, Johnson became very loud and the neighbors started to come out of the house, and as we were leaving, a woman came out of the same address.
>
> THE COURT: Did that cause you to perhaps suspect that that was where he lived?
>
> THE WITNESS: That is correct.
>
> THE COURT: So you didn't need to take him into the station to find out his identity, did you?
>
> THE WITNESS: The boy wish [*sic*] him refused to give me identification, too, at this time. (*COPPAR* Record 486-87).

only in a nightgown,[20] was struck by police officers in the body with nightsticks, dragged by the hair, and pushed down a flight of stairs. All this occurred because she began to scream upon viewing a number of police officers break down her front door, push her aside, seize her husband, drag him down the stairs, and strike him in the head with a nightstick causing an open wound. The justification for the police actions in this incident was the disputed allegation that Mr. Locke had thrown water on a police officer. Somewhat charitably Judge Fullam characterized this incident as involving "a rather complete loss of control on the part of the police." (A 108a, 357 F. Supp. at 1311).

In the Mark Soto incident,[21] a police officer "apparently believing" that Soto had attempted to grab his gun, proceeded to strike him with the butt of his gun. When the fifteen year old tried to get away from this attack, the officer struck him again with his gun, knocking him to the ground. The assault on the boy continued as two other police officers arrived and proceeded to hit the boy in the head with both their nightsticks and feet. As a result of injuries suffered during this attack, Soto required hospital treatment, and received a number of stitches for a head wound.

In yet another incident,[22] a neatly dressed black male who had a Ph.D. in pharmacology was stopped by police while walking on the sidewalk near his home. When he did not produce any identification, and questioned the police as to why he had been stopped, he was placed under

20. The police arrested the Lockes and transported them to division headquarters without permitting Mrs. Locke to put on additional clothing. By reason of her condition and scanty attire, Mrs. Locke was the target of rude and offensive remarks from policemen (A 109a, 357 F. Supp. at 1311).

21. A 111a-13a, 357 F. Supp. at 1312-13.

22. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302.

arrest, though not told why. Thereafter he was frisked, and when he attempted to pull his hand away while being handcuffed, he was struck on the arms, spine, knuckles and stomach with a nightstick. He was held by the police overnight, during which time he was charged with disturbing the peace, resisting arrest and assault and battery on a police officer. Several weeks later these charges were dismissed. The victim in this incident wrote a letter of complaint to the Police Commissioner, and gave statements to the FBI and a staff inspector of the Philadelphia Police Department. He never heard from the FBI and the only communication he received from the Police Department was in response to a call by his attorney who was informed that no action would be taken.

In the Brown incident (A 117a-18a, 357 F. Supp. at 1315-16), four police officers knocked on the Brown's door and, without waiting for a response, broke it down and thoroughly ransacked the house, emptying drawers and closets and leaving the house in disarray. Three officers invaded Mrs. Brown's bedroom on the second floor where she had just arisen from a nap. Mrs. Brown was dressed only in her underwear, and the police ordered her to remain standing while they searched her bedroom. Only after some delay was Mrs. Brown provided with clothing. The police had been looking for narcotics but found no drugs or evidence of use of drugs by the Browns.

The District Court relied on the "extensive evidence of specific instances of violations of constitutional rights" presented in *COPPAR* in determining that some relief was necessary to eliminate future, predictable violations (A 183a). With the exception of two minor *COPPAR* incidents,[23] (neither of which the District Court relied on)

23. Charles Blackman, A 87a-88a, 357 F. Supp. at 1301; Robert Nicholas, A 88a, 357 F. Supp. at 1301-2.

the remaining twenty-seven incidents occurred between May 18, 1970[24] and October 23, 1970,[25] a span of but five months. In light of the relief granted, it is significant to note that the frequency of the incidents was *higher* during the period when the temporary restraining order in *COPPAR* was in effect.[26] Four of the six incidents recounted above occurred when the restraining order was in effect.

The District Court also examined certain relevant statistical information concerning arrests and disposition of cases which tended to confirm the patterns demonstrated at trial. The testimony showed that in a number of incidents where police made unconstitutional arrests or used excessive force, the victim was charged with disorderly conduct, resisting arrest or assault and battery on a police officer.[27] Almost always, no conviction resulted. The statistics revealed that in the eighteen month period prior to July 1, 1970, 2,709 cases were disposed of in which the defendant was charged with resisting arrest or assault and battery on a police officer. In 78 percent of these cases, the defendant was exonerated, 67 percent before trial (A 120a, 357 F. Supp. at 1316).

In at least five[28] of the incidents presented in the two cases, the trial court found that the defendants themselves

24. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302.

25. Irene Thompson, A 119a, 357 F. Supp. at 1316.

26. There were sixteen incidents about which testimony was given which occurred during the 3½ month period preceeding the September 4, 1970 issuance of the temporary restraining order. Twelve incidents of which evidence was presented occurred in the 1½ month span following its issuance.

27. *E.g.*, Gerald Goode, A 75a-78a, 357 F. Supp. at 1295-97; Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Boccuto & Dignetti, A 114a-16a, 357 F. Supp. at 1314.

28. Joseph Reas, A 83a-84a, 357 F. Supp. at 1299-1300; Louise Reed, A 84a-85a, 357 F. Supp. at 1300; "Jew Bastard" Incident, A 85a-86a, 357 F. Supp. at 1300; Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Kenneth Lassiter, A 91a-93a, 357 F. Supp. at 1303-4.

were put on notice as to the police misconduct. Complaints were also made to supervisory personnel concerning at least five other instances of police misconduct.[29] In one incident, defendant Rizzo was a direct participant in a course of conduct which resulted in unreasonably high bail being set for sixteen persons.[30] With respect to the evidence concerning complaints about Officer DeFazio, the court stated, "It is clear that numerous oral complaints were received by DeFazio's superiors, relating to his conduct both on and off duty, and that no written record of these complaints was made, and no action taken." (A 86a, 357 F. Supp. at 1300).

Evidence as to Predictable Patterns of Police Abuse and the Defendants' Policy of Official Indifference Thereto.

We note first that the defendants in both cases produced *absolutely no defense testimony* to contradict the findings and conclusions of the District Court with respect

29. Gerald Goode, A 77a, 357 F. Supp. at 1296; Helen Peurifoy, A 95a, 357 F. Supp. at 1304; Jerry Serrano, A 113a, 357 F. Supp. at 1313; Edward Smalley, A 118a, 357 F. Supp. at 1316; Irene Thompson, A 119a, 357 F. Supp. at 1316.

30. Black Panther Party Incidents, A 99a-101a, 357 F. Supp. at 1307. In the Black Panther Bail Incident, the defendants were initially held without being charged, arraigned or having bail set. Attorneys for the defendants thereupon applied for a writ of habeas corpus in state court, and received an order directing that the defendants be released on $500 bond for a hearing to be held the following morning.

When the attorneys presented this order to the Municipal Court judge sitting on regular assignment at the Police Administration Building, she refused to comply with it, and, after conferring with defendant Rizzo, she left for the day. Shortly thereafter, a Common Pleas Court judge, at the personal request of defendant Rizzo, arrived at the court and began sitting on the bench. This judge "refused to consider or apply the prescribed standards for fixing bail" (A 100a, 357 F. Supp. at 1307) and set bail at $100,000 for each defendant.

to patterns of police abuse and defendants' policy of official indifference.[31] The evidence presented by plaintiffs to supplement their testimony as to individual incidents consisted of fact witness testimony, expert testimony, and properly authenticated corroborative governmental and private research studies and reports concerning common patterns of police abuse, the defendants' acquiescence in and toleration of such abuses and the concomitant absence of remedial efforts directed thereto. The evidence as to official indifference revealed the following patterns: non-registering of complaints by the Police Department when first made; "run around" or lack of response given complainants;[32] inadequate investigation by police personnel charged with this responsibility;[33] failure to compile complaints concerning particular officers over a period of time causing both a lack of regard for complaints when officers are rated and the continued exposure of citizens to police officers whose propensity to abuse can clearly be

31. The court below somewhat generously found that "the defendants produced some countervailing evidence" as to the larger, institutional issues raised in these lawsuits (A 67a, 357 F. Supp. at 1291). That evidence came not by way of defense witness testimony, but rather by reference to the existing Police Department Directive 127 which set forth procedures for handling citizen complaints against the police. The version of the Directive referred to is set forth at A 143a-45a. As the findings of the District Court make clear, the remedial police procedures currently in effect are both insufficient on their face, and more honored in their breach.

32. *E.g.*, Raymond Ragland complaint, (A 90a, 357 F. Supp. at 1302); Kenneth Lassiter complaint, (A 93a, 357 F. Supp. at 1303-4); Mary Rouse complaint in connection with the Soto and Serrano incident, (A 113a, 357 F. Supp. at 1313); Edward Smalley, (A 118a, 357 F. Supp. at 1316); Irene Thompson complaint, (A 119a, 357 F. Supp. at 1316).

33. *See, e.g.*, Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. Pa. L. Rev. 1023, 1025, 1027-34 (1970). Professor Schwartz testified as part of plaintiffs' case in *Goode*.

documented;[34] inadequate Police Board of Inquiry procedures,[35] which, when coupled with lack of departmental regulations proscribing certain patterns of police abuse, have no discernible impact on abusive police practices; threats, intimidation, and, in some instances, arrest for disorderly conduct or worse of citizens who go to police stations to register complaints or, even, register criticism

34. Whenever a citizen writes a letter of commendation about a particular police officer, it is placed in the officer's personnel file. However, when a citizen writes a letter of complaint, there is no similar procedure (A 70a, 357 F. Supp. at 1293). Thus, when an investigating officer, seeking information about an officer's background and record examines the personnel folder, he receives a distinctly inaccurate impression.

For example, when Staff Inspector Charles P. Dittmer investigated the Gerald Goode incident and Officer DeFazio's involvement in it, he examined DeFazio's personnel folder to see if the officer was a disciplinary problem (*Goode* Record 350-51). It is usual practice to investigate the underlying facts of a disciplinary record found in the personnel file (*Goode* Record 351). Since the lack of a record of the many complaints against DeFazio (see below) led Inspector Dittmer to the conclusion that DeFazio was not a disciplinary problem, Dittmer made no further investigation of DeFazio and did not include any reference to DeFazio's record in his report to the Police Commissioner (*Goode* Record 343, 349, 397; Exhibit P-20).

Meanwhile, as Officer DeFazio's record of abuses against citizens grew *worse*, his rating by superiors grew *better*. Overall ratings on April 7, 1966, July 14, 1966 and May 21, 1967 were each satisfactory (*Goode* Record 368). As a result of a Police Board of Inquiry hearing held November 8, 1967, Officer DeFazio received five days suspension for his conduct in connection with the "Jew Bastard" incident and the Louise J. Reed incident, which occurred on September 9, 1967, and October 3, 1967, respectively (A 84a-86a, 357 F. Supp. at 1300). Yet on May 19, 1968, Officer DeFazio was given an overall rating of superior. Following this rating, a neighbor of Officer DeFazio wrote defendant Rizzo on September 9, 1968, (*Goode* Record 468, 469-70; Exhibit P-24), in order to file a complaint about Officer DeFazio's conduct. In addition, Mrs. Eleanor Reas complained in early May, 1969, to the Police Department (*Goode* Record 597). In spite of the foregoing, Officer DeFazio again received a superior rating on June 1, 1969.

35. Indeed it appears that defendants have conceded that the complaint and disciplinary procedures are inadequate in dealing with police violations of constitutional rights (Pet. Br. 39).

of police at the scene of an incident;[36] and the complete lack of any effective or meaningful remedy for constitutional violations by police through existing mechanisms within the courts.[37]

This evidence as to the workings of the Police Department was supplemented by evidence concerning the inability of other Philadelphia governmental (District Attorney, Human Relations Commission, former Police Advisory Board) and private agencies adequately to remedy the problem. The Human Relations Commission stopped accepting complaints about police misconduct because of the refusal of the Police Department to cooperate with investigations. The court found that the District Attorney's office was ineffective in prosecuting police officers charged with having committed crimes against citizens because of the inherent conflict of interest present. In many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are pending against the complainant. The same Assistant District Attorney may be responsible for some aspects of both prosecutions. Furthermore, the District Attorney must rely on the Police Department for investigation of criminal activity by individual policemen. The practice of dismissing charges against a complainant in exchange for his agreement not to pursue his complaint against the police officer occurs frequently. There was also evidence presented demonstrating the inadequacy of damage actions in the courts to provide a solution to the problem. *See* A 71a-73a, 126a-27a, 357 F. Supp. at 1293-94, 1319; Schwartz, *supra*, n. 33.

36. *E.g.*, arrest of Gerald Goode, (A 76a-77a, 357 F. Supp. at 1295-96); arrest of Helen Peurifoy, (A 94a, 357 F. Supp. at 1304.)

37. *E.g.*, Testimony of Bernard L. Segal, (*COPPAR* Record 904-21); Testimony of Mercer D. Tate, (*Goode* Record 655-60).

As the incidents indicate, these institutional failures have concrete consequences for numerous citizens in Philadelphia. For example, Gerald Goode required several stitches as a result of an attack upon him by Officer DeFazio, about whom "numerous oral complaints" previously had been made. This incident would not have occurred if corrective measures had been taken earlier. *See* n. 34, *supra*. Thus, the propriety of the trial court's injunctive relief must be measured both against the background of constitutional violations of "unacceptable frequency," (A 186a), and the need to devise a remedy in light of the abdication of responsibility by defendants.

Findings of the District Court.

Based on the record as detailed above, the District Court made extensive findings and concluded that violations of rights by police take place with such frequency that "they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." (A 126a, 357 F. Supp. at 1319). We note that defendants' Brief, like the Petition for Writ of Certiorari before it, makes no challenge under Rule 52 of the Federal Rules of Civil Procedure or other reference to the fact findings of the District Court. These unchallenged findings are found in the Appendix (A 65a-130a).

The court found that two types of individuals were most likely to be subjected to arrests where no probable cause existed: "poor blacks, and individuals who question or protest the initial police contact." (A 122a, 357 F. Supp. at 1317). The court concluded on the basis of the voluminous record that violations of legal and constitutional rights of citizens by police are most widespread in the following areas of police activity:

> "(1) Arrests 'for investigation'; (2) Treatment of citizens who question or criticize what the police are doing in a particular instance; (3) Charges of resisting arrest, when the arrest was unlawful in the first place; (4) Extreme overreaction to actual or reported assaults upon policemen." (A 124a, 357 F. Supp. at 1318).[38]

Having concluded that plaintiffs were entitled to relief remedying the recurring and predictable abuses found to exist, the trial court reviewed existing remedies for preventing such abuses. Among the remedies evaluated were the existing police procedures for processing and adjudicating citizen complaints and for enforcing police discipline. The District Court found they were "totally inadequate" to prevent violations of citizens' rights in that: (1) the procedures were geared to handle infractions of police regulations but were not framed to cover violations of citizens' constitutional rights; (2) complaints were handled on a "chain of command" basis which discouraged fair handling of citizen complaints; (3) there was no adequate opportunity for the complainant to present his case to an objective tribunal; (4) the outcome of the proceedings was not disclosed; and (5) there was a tendency to minimize consequences of proven police misconduct (A 70a, 124a, 128a, 357 F. Supp. at 1292-93, 1318, 1320). As one predicate for relief, the District Court found that:

> "It is the *policy of the department* to discourage the filing of such complaints, to avoid or minimize the

38. The following incidents are examples of the types of situations in which abuses occurred: (1) investigative arrests, Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; (2) citizens' criticism, Helen Peurifoy, A 93a-95a, 357 F. Supp. at 1304; (3) unlawful resisting arrest charges, Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; (4) extreme overreaction to reported assaults on police, Locke & Perry, A 107a-9a, 357 F. Supp. at 1310-11.

consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints." [A 124a, 357 F. Supp. at 1318 (emphasis added)].

Although it concluded plaintiffs and their class were entitled to equitable relief, the District Court emphasized that it had not decided that plaintiffs have a constitutional right to improved departmental procedures for handling citizen complaints against police. Rather, the court found that

> ". . . under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." (A 130a, 357 F. Supp. at 1321).

The District Court entered an order requiring defendants

> ". . . to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." (A 131a-32a, 357 F. Supp. at 1322).

The Final Judgment.

Pursuant to the District Court's order, defendants submitted to the court on April 12, 1973 a proposed order which was in the form of an internal police department directive. The proposed order consisted of a revised version of an existing internal directive (Philadelphia Police Department Directive 127, dated March 31, 1967) detailing procedure for handling citizen complaints against police which defendants contended remedied the inadequacies found by the court.[39]

As permitted by the court's order (A 131a-32a, 357 F. Supp. at 1322), plaintiffs submitted a counterproposal which was drafted in the same form as defendants' proposed order (A 147a-62a). Plaintiffs' counterproposal adhered as closely as possible to the provisions of Directive 127 insofar as the routing of documents and the imposition of responsibility were concerned but remedied the defects and inadequacies of defendants' proposal with respect to, *inter alia*, failure to insulate complaint procedure from chain of command pressures, absence of a clear designation of responsibility for investigation, and absence of a statement of minimum elements the investigation must include. These deficiencies, and others detailed in Plaintiffs' Memorandum in Response to Defendants' Plan (A 163a-67a), were measured against the standards set forth by the court in its opinion (A 129a, 357 F. Supp. at 1321).

During the five months following the filing of the court's opinion and order, several conferences were held with the District Court in an attempt to develop a satisfactory plan. Although defendants made clear that they objected to the entry of any order on the ground the District Court lacked the power to order a revision of police procedures, defendants at *no* time during the hearings or subsequent conferences objected to, or presented any evi-

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39. What defendants described as a "completely revised" Directive 127 was submitted as defendants' proposed order (A 133a); it is set forth at A 135a-42a. The original version of Directive 127 is set forth at A 143-45a.

dence concerning, the proposals which were submitted by plaintiffs at the direction of the District Court.

The District Court amended the proposals before it (A 178a-80a) and issued its final judgment[40] on October 5, 1973 which included a suggested form of a directive setting forth the complaint procedures to be followed including such matters as: (1) preparing and distributing appropriate forms for the submission of complaints; (2) prompt and adequate investigation; (3) adjudication by an impartial body insulated from command pressures; and (4) fair opportunity for both complainants and police officers to present their case, followed by notification to the parties of the outcome. The relief ordered tracked the deficiencies in the present system which the District Court found to exist. Significantly, the District Court noted that "the resolution of all of the disputed items [concerning the form of the final judgment] was more nearly in accord with the defendants' position than the plaintiffs' position." (A 190a).

Judge Fullam, throughout the hearings, post-hearing negotiations and, ultimately, the entry of the final judgment, consistently demonstrated a strong concern for minimizing any intrusions into or disruptions of the Philadelphia Police Department.[41] Indeed, in response to an earlier suit seeking injunctive relief against the police, Judge Fullam had declared, "[A]ny attempt at broad-spectrum injunctive relief should be avoided. Courts are simply not equipped to supervise the day-to-day operations of police officers by injunction." *Hughes v. Rizzo*, 282 F. Supp. 881, 885 (E. D. Pa. 1968).

40. App. Cert. Pet. 20a-23a. On October 5, 1973, the District Court also issued an opinion awarding attorney's fees to counsel for plaintiffs (A 181a-86a). The Court of Appeals vacated and remanded this award (App. Cert. Pet. 19a, 506 F. 2d at 551); review of this portion of the Court of Appeal's order has not been sought in this Court.

41. *See, e.g., Goode* Record 10-11; A 127a, 130a, 357 F. Supp. at 1320, 1321.

The relief granted by the court was viewed as a necessary step for "the prevention of recurring constitutional violations." (A 190a). With respect to its guidelines, the court stated that they were "consistent with generally recognized minimal standards for improving police-community relations, . . . impose no substantial burdens on the Police Department, . . . pose no threat to vigorous law enforcement, [and] afford protection to the accused policeman, as well as to the complaining civilian." (A 130a, 357 F. Supp. at 1321).

The Court of Appeals.

On November 1, 1974, the Court of Appeals for the Third Circuit, in an opinion by the Honorable Joseph F. Weis, Jr., affirmed the District Court's grant of injunctive relief. Based on its own independent "review of the lengthy record in this case," the Court of Appeals concluded that "there was an adequate evidentiary record to support the findings of the district court that violations of constitutional rights by the Philadelphia police occurred in an unacceptably high number of instances and that in the absence of change in procedures such violations are likely to recur." (App. Cert. Pet. 10a-11a, 506 F. 2d at 547). The Court of Appeals approved the relief ordered, noting:

> "The district court's order granting relief is limited and moderate in tone indicating its faith in the ability and willingness of the police department to investigate and correct the transgressions of its errant members. Despite the assertions of the defendants, the court is not thrusting itself into the day to day operations of the police department—a situation which

we agree would be inadvisible and inappropriate in the circumstances of this case. *Cf. Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966). Indeed, the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972." (App. Cert. Pet. 11a-12a, 506 F. 2d at 547-48).

Defendants' petition for rehearing en banc was denied by the Court of Appeals on December 6, 1974 (A 192a).

SUMMARY OF ARGUMENT.

I. Citizens have a fundamental right to be free from persistent patterns of unconstitutional, illegal and unjustified exercises of police power. Injunctive relief is an appropriate remedy to protect that right where, as in the present case, plaintiffs convincingly established and the court found both a pattern of frequent and recurring violations by police and an official policy of disregarding or minimizing such infractions.

Defendants, the municipal officials charged with the supervision, control and discipline of the Philadelphia Police Department, are responsible for adequately protecting citizens from unconstitutional police conduct. Defendants' acquiescence in unconstitutional conduct through failure to maintain adequate procedures for detecting and preventing recurrent police abuses is actionable under 42 U. S. C. § 1983, and the federal courts have the duty to grant effective relief to remedy such violations.

II. The federal courts have wide discretion to fashion effective injunctive relief directed at preventing future violations of rights. The relief ordered in the present case, establishment of adequate internal police procedures for the receipt, investigation and disposition of citizen complaints against the police, was appropriate in light of the voluminous and detailed record of police abuses and defendants' indifference thereto. This indifference is reflected in the totally inadequate existing procedures for controlling violations of rights by police. The relief granted remedied the deficiencies in the present police procedures found by the court to exist and appeared to offer the most effective method of reducing police violation of constitutional rights in the future.

Other forms of relief such as damage actions against the police were considered by the District Court and properly rejected as being ineffective to prevent future violations of rights and inadequate to "compensate" victims. Similarly the entry of a prohibitory injunction was rejected in light of the difficulty of framing clear and precise orders to cover the variety of situations in which the police must act and the cumbersome mechanism of contempt proceedings for enforcing such orders as was experienced by the District Court in connection with the temporary restraining order it entered at the outset of the *COPPAR* case.

The relief granted is to be administered solely by the police, thereby minimizing any intrusion into police operations. The relief granted was limited and moderate and protects the public interest by insuring that the police both enforce and observe the law with equal vigor. This Court should affirm the judgment of the Court of Appeals for the Third Circuit with respect to the grant of injunctive relief.

ARGUMENT.

I. Equitable Relief Was Necessary and Appropriate to Remedy Both a Pattern of Recurring and Predictable Violations by Police of Citizens' Constitutional Rights and the Concomitant and Systematic Failure of Municipal Officials to Remedy or Prevent Such Abuses.

Based on the voluminous and detailed record before it, the District Court found the totality of the evidence *"convincingly"* established that violations of the legal and constitutional rights of citizens occur "entirely too frequently," that such violations "cannot be dismissed as rare, isolated instances," that it is the *"policy"* of the department to "avoid or minimize the consequences of proven police misconduct" and that "little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." [A 123a-24a, 126a, 357 F. Supp. 1318, 1319 (emphasis added)]. Predicating its final order upon the predictable continuation of violations and the inadequacy of existing remedies, the court below ordered changes to be made in procedures for handling citizen complaints against the police in order to "prevent further abuses." (A 128a, 357 F. Supp. 1320).

In their Petition for Certiorari and Brief, defendants do not challenge the trial court's findings which were affirmed by the Court of Appeals.[42] Rather, defendants,

42. This Court has set forth the following rule with respect to findings of fact concurred in by two lower courts:

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, 275 (1949).

This rule is particularly applicable in the present case where defendants do not challenge the trial court's findings of fact at all.

who admittedly are responsible for controlling and preventing police violation of citizens' rights (Pet. Br. 4-5; n. 7, *supra*), and who have been found to have done little or nothing to prevent or punish such violations, contend in this Court that they cannot be held accountable for their systematic indifference to recurring violations (Pet. Br. 20-22, 35-36). Although the court found that they have failed to protect citizens from police violation of rights, defendants argue that the federal courts cannot order them to do so for this would "interfere" with the existing operations of the Police Department and constitute an abuse of federal injunctive power (Pet. Br. 23, 29-35). Finally, although plaintiffs have established the existence of predictable patterns of violations of rights, defendants maintain that adequate remedies at law exist and therefore a federal court cannot issue an injunction directed at preventing future abuses (Pet. Br. 40-44). Plaintiffs submit defendants' arguments are without merit and should be rejected by this Court.

A. The Trial Court Record Established and the District Court Found a Pattern of Recurring and Predictable Violations of Plaintiffs' Federally Secured Rights.

In granting the requested relief, the District Court was clearly mindful that "the deprivation of . . . rights . . . secured by the Constitution" is an obvious and indispensable predicate for the exercise of judicial power. 42 U. S. C. § 1983. The right plaintiffs sought to vindicate is the fundamental right of a people living in a democratic society to be free from repeated patterns of unconstitutional, illegal and unjustified exercises of police power. The right to be protected from such violations is simply a corollary right, and the need for protection from such

abuses is the predicate for injunctive relief. Plaintiffs' right to some form of equitable relief would be established, in other words, even in the absence of a deliberate departmental policy not to adequately supervise and discipline individual police officers. The fact that the trial court found such a departmental policy to exist (A 124a, 357 F. Supp. at 1318) merely strengthens plaintiffs' claim, particularly as it relates to the proper form of equitable relief.

The authors of the Fourteenth Amendment, and of the preceding and subsequent Civil Rights Acts, viewed prevention of violence and protection of personal security as the first and foremost duties of government.

> "The duty of the Government and the citizen is reciprocal; the obligation is mutual. The Government owes to its citizen protection; the citizen owes to the Government obedience and support . . . ." Cong. Globe, 39th Cong., 1st Sess. 2918 (statement of Senator Willey during debate concerning adoption of Fourteenth Amendment).[43]

43. *See* the virtually identical statement of Senator Stewart, *id.* 2799.

This view of government was shared by the Amendment's opponents. Thus, Senator Cowan, in opposing the addition of a definition of "citizenship" (the first sentence of the Amendment as eventually passed) opined: "So far as the courts and the administration of the laws are concerned, I have supposed that every human being within [State] jurisdiction was in one sense of the word a citizen, that is, a person entitled to protection . . . ." *Id.* 2890.

Most of the supporters of the Fourteenth Amendment had, a few months earlier in the session, voted for the Civil Rights Act of 1866 to implement the Thirteenth Amendment. 16 Stat. 141. Designed to guarantee to blacks the rights which differentiate a free man from a slave, the Act secured: "the full and equal benefit of all laws and proceedings for the security of persons and property." 42 U. S. C. § 1981. The Act's purpose was to assure to blacks what its authors believed to be the three fundamental rights which government was established to protect (and prohibited to

Indeed, living in a century of laissez-faire economic thought, many of the sponsors of the Fourteenth Amendment and the Civil Rights Act of 1871 [44] considered protection of personal security to be virtually the only purpose of government. It is not likely that its authors intended to exclude from that constitutional provision equality in the enjoyment of what they considered to be the primary benefit dispensed by government.

The evidence in the present cases established that defendants failed to protect plaintiffs and the class they represent from numerous acts by police which have repeatedly been held to constitute violations of individual rights. Among the violations which the District Court found were illegal arrests and subsequent unlawful imprisonments,[45] *e.g.*, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Basista v. Weir*, 340 F. 2d

43. (Cont'd.)
infringe): in the words of Kent and Blackstone, ". . . 'the right of personal security, the right of personal liberty, and the right to acquire and enjoy property' . . ." *Id.* 1117, 1118, statement of the Act's House sponsor, Representative Wilson. At *id.*, 1757, its Senate sponsor quoted the same language in successfully urging its enactment over a presidential veto. The Act did not guarantee "political rights" (*e.g.*, voting, jury service), but was limited to what its authors believed to be the basic rights of freemen—"protection of the courts and to have justice administered to all." *See, e.g.*, colloquy between Senators McDougall and Trumbull at *id.* 476.

Senator Pratt's analysis of the citizens' right to protection is apt:

> "To what end, sir, are taxes laid, many and burdensome; for what purpose is a costly machinery of government, *but to afford protection* to men in the peaceful pursuit of their occupations . . . ." Cong. Globe, 42d Cong. 1st Sess. 504 (emphasis added).

For other such statements from the 1871 debates see *id.* 322 (Representative Stoughton); *id.* 691 (Senators Edmunds and Blair).

44. Act of April 20, 1871, 17 Stat. 13, which included the provision now embodied in 42 U. S. C. § 1983 (1970).

45. *E.g.*, Gerald Goode, A 75a-78a, 357 F. Supp. at 1295-97; Johnson & Simon Incidents, A 105a-6a, 357 F. Supp. at 1309-10.

74 (3rd Cir. 1965); the use of excessive force and unconstitutional assaults,[46] *e.g.*, *Screws v. United States*, 325 U. S. 91 (1945); and illegal searches,[47] *e.g.*, *Beck v. Ohio*, 379 U. S. 89 (1964); *Monroe v. Pape*, 365 U. S. 167 (1961). *United States ex rel. Covington v. Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969).

Where, as in the present case, plaintiffs convincingly established both "a pattern of frequent police violations of rights" [48] (A 124a, 357 F. Supp. at 1318), and a departmental "policy" of disregarding or minimizing such infractions (A 124a, 126a, 357 F. Supp. at 1318, 1319), the federal courts have recognized it is their duty to insure the elimination of such abuses.[49] Moreover, injunctive relief has traditionally been viewed as a proper remedy in cases presenting unconstitutional police activity.[50]

46. *E.g.*, Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; Locke & Perry Incidents, A 107a-9a, 357 F. Supp. at 1310-11.

47. *E.g.*, Ballow Incident, A 78a-79a, 357 F. Supp. at 1297; Brown & Smalley Incidents, A 117a-18a, 357 F. Supp. at 1315-16.

48. "The number of incidents necessary to show a pattern or practice depends upon the nature of the right protected and the nature of the ordinary violations of such right." *United States v. Mintzes*, 304 F. Supp. 1305, 1314 (D. Md. 1969). "'Pattern or practice' have their generic meanings", and must refer to events which are not "isolated or accidental or peculiar", but rather events which "happened in the regular procedures followed by the state officials concerned." *United States v. Mayton*, 335 F. 2d 153, 159 (5th Cir. 1964); *see also Bishop v. Stoneman*, 508 F. 2d 1224, 1226 (2d Cir. 1974); *United States v. Gilman*, 341 F. Supp. 891, 905 (S. D. N. Y. 1972).

49. "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief [footnote omitted]." *Bell v. Hood*, 327 U. S. 678, 684 (1946); *see also Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 392 (1971).

50. *See, e.g., Hague v. CIO*, 307 U. S. 496 (1939); *Sullivan v. Murphy*, 478 F. 2d 938, 965-66 (D. C. Cir.), *cert. denied*, 414 U. S. 880 (1973); *Lewis v. Kugler*, 446 F. 2d 1343, 1350-52 (3d Cir. 1971); *Belknap v. Leary*, 427 F. 2d 496, 498-99 (2d Cir. 1970);

> "Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate." *Allee v. Medrano*, 416 U. S. 802, 815 (1974).

Plaintiffs introduced evidence as to common patterns of police abuse and departmental indifference to and toleration of such abuses,[51] all of which led the District Court to conclude that violations of citizens' rights by police "occur, with such frequency that they cannot be dismissed as rare, isolated instances." (A 126a, 357 F. Supp. at 1319). The evidence of official indifference and toleration of such police crimes and ineffectiveness of other governmental and private agencies to remedy the problem demonstrated that such conduct would continue in the future thereby establishing both the need and appropriateness of plaintiffs' request for injunctive relief. *See, e.g., Zenith Corp. v. Hazeltine*, 395 U. S. 100, 130 (1969); *United States v. W. T. Grant Co.*, 345 U. S. 629, 633 (1953).

During twenty-one days of hearings, the District Court heard testimony concerning these matters from approximately 250 witnesses, over 100 of whom were police officers. This record before the trial court certainly contained a sufficient base of information from which to

50. (Cont'd.)
Schnell v. City of Chicago, 407 F. 2d 1084, 1086 (7th Cir. 1969); *Lankford v. Gelston*, 364 F. 2d 197, 201-3 (4th Cir. 1966).

> "The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.' [citation omitted]. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress." *Mitchum v. Foster*, 407 U. S. 225, 242 (1972).

51. *E.g., Goode* Record 285-88, Exhibit P-19; *COPPAR* Record 928, 1052-83.

properly reach conclusions concerning the likelihood of continued violations based on past patterns of conduct. Moreover, the evidence produced by plaintiffs must be evaluated in light of the fact that victims of police abuses are often difficult to identify and reluctant to testify. As found by the District Court, the Police Department discourages the filing of citizen complaints against police and tends to minimize and seek withdrawal of complaints which are filed (A 69a-71a, 357 F. Supp. at 1292-93; *see also* A 95a, 357 F. Supp. at 1304). Also, in many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are lodged against the complainant. The *quid pro quo* for a dismissal of the criminal charges is the complainant's agreement not to press the complaint against the police (A 73a, 357 F. Supp. at 1294).

The trial court found and the Court of Appeals agreed that the evidence convincingly established the recurring and predictable nature of police violations of rights. Plaintiffs have more than adequately established the threat of continued violations sufficient to warrent injunctive relief from the federal courts.

B. The Trial Court Record Established and the District Court Found That Municipal Officials Responsible for the Control and Discipline of the Philadelphia Police Department Failed to Remedy or Prevent Unconstitutional Activities by the Police.

Defendants contend that equitable relief was not appropriate in these cases because the District Court failed to find "any unlawful conduct attributable to [defendants]." (Pet. Br. 3). The record and findings of the District Court simply do not support defendants' argument.

Defendants ignore the fact that their predecessors in office admitted in these actions that the official positions held by defendants carry with them the responsibility for law enforcement within the City of Philadelphia including the supervision, control and discipline of the Police Department (A 13a, ¶¶ 7-11; 25a, ¶¶ 7-11; 38a-39a, ¶¶ 13-17; 62a, ¶ 8). Defendants also ignore the fact that plaintiffs in both cases alleged and sought relief from defendants' toleration of and failure to take adequate action against violations by police officers of the constitutional and legal rights of plaintiffs and the class of all Philadelphia residents represented by plaintiffs. (*See, e.g.*, A 12a-14a, ¶¶ 5, 7-18; A 45a, ¶ 36; A 66a-67a). Finally, defendants ignore the evidence and specific findings of the District Court with respect to defendants' involvement in and knowledge of certain incidents in these cases,[52] including failure to take any action with respect to disciplining errant officers, and defendants' policies and practices which encourage the pattern of abuses perpetrated by individual officers.[53]

While it is true that the District Court did not find "any *conscious* departmental policy of racial bias, or of discriminatory enforcement on racial lines," it did conclude the defendants condoned and failed to take action against an officer's manifestation of racial prejudice in the performance of his police duties (A 124a, 357 F. Supp. at 1318) (emphasis added).[54] The trial court also found that poor blacks as a class are particularly likely to be

52. *See* A 77a, 83a-86a, 89a-90a, 91a-93a, 95a, 113a, 118a, 119a, 357 F. Supp. at 1296, 1299-1300, 1302, 1303, 1304, 1313, 1316.

53. *See* A 69a-71a, 124a, 126a, 128a, 357 F. Supp. at 1292-93, 1318, 1319, 1320.

54. "The presence of racial prejudice on the part of an individual police officer, manifested in the performance of his police duties, is unlikely to be reflected adversely in the performance ratings accorded him by his superiors." (A 124a, 357 F. Supp. at 1318).

subject to arrest and detention without probable cause (A 122a, 357 F. Supp. at 1317). Moreover, we are concerned here with de facto consequences, not motives or specific intent.[55] The defendants are clearly responsible, without regard to their motives, for the natural consequences of their acts and omissions. *Monroe v. Pape, supra*, 365 U. S. at 187.

Similarly, although the District Court did not find "any *overall* Police Department policy to violate the legal and constitutional rights of citizens," the trial court did find that the evidence established that "such violations do occur, with such frequency that they cannot be dismissed as rare, isolated instances; and that *little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence.*" (A 124a, 126a, 357 F. Supp. at 1318, 1319) (emphasis added). Specifically, the trial court found that

> "[e]xisting procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally inadequate. It is the *policy of the department* to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints." (A 124a, 357 F. Supp. at 1318) (emphasis added).

Although admittedly responsible for supervising and disciplining the Police Department and under the duty to act in accordance with the Fourteenth Amendment, defendants were found to have permitted a pattern of recurring and predictable police abuses of citizens' rights to

55. *See, e.g., Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972); *Jenkins v. Averett*, 424 F. 2d 1228, 1232 (4th Cir. 1970); *Daniels v. Van DeVenter*, 382 F. 2d 29, 31 (10th Cir. 1967); *Basista v. Weir*, 340 F. 2d 74, 81 (3d Cir. 1965).

develop and to have acquiesced in the continuation of such conduct by failing to take effective action to punish or prevent such infractions. The lower courts, including ten courts of appeals, have expressly or impliedly recognized that acquiescence in unconstitutional activity is itself actionable under 42 U. S. C. § 1983.[56] As stated in *Schnell v. City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969):

56. First Circuit: *Inmates of the Suffolk County Jail v. Eisenstadt*, 494 F. 2d 1196, 1199 (1st Cir.), *cert. denied*, 419 U. S. 977 (1974) (citing *Schnell v. City of Chicago* and holding Commissioner of Corrections may be enjoined for failure to bring conditions at the jail up to constitutional standards without proof of his personal fault); *Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972) (citing *Monroe v. Pape* and holding superintendent of state treatment center may be ordered to eliminate unconstitutional conditions which are the natural consequence of his inaction); Second Circuit: *Hart v. Community School Board of Education*, 512 F. 2d 37, 50-51 (2d Cir. 1975) (citing *Monroe v. Pape* and holding governmental authorities responsible for the natural and foreseeable consequences of their actions and omissions); *Wright v. McMann*, 460 F. 2d 126, 134-35 (2d Cir. 1971), *cert. denied*, 409 U. S. 885 (1972) (warden liable for unconstitutional treatment of prisoners by lower prison officials where warden knew or should have known of conditions and was ultimately responsible for permitting such conditions to exist); *Belknap v. Leary*, 427 F. 2d 496, 498 (2d Cir. 1970) (injunctive relief appropriate where city officials continue to fail to protect demonstrators); Third Circuit: *Lewis v. Kugler*, 446 F. 2d 1343, 1351 (3d Cir. 1971) (officials who direct or tolerate constitutional violations by state troopers may be ordered to correct situations by altering police disciplinary procedure); Fourth Circuit: *Catlette v. United States*, 132 F. 2d 902, 907 (4th Cir. 1943) (deputy sheriff who failed to protect Jehovah Witness from mob violence was liable for deprivation of individuals' constitutional rights); Fifth Circuit: *Jennings v. Patterson*, 460 F. 2d 1021, 1022 (5th Cir. 1972) (official inaction is actionable when defendants are on notice as to wrongful acts, citing *Monroe v. Pape*); *Whirl v. Kern*, 407 F. 2d 781, 789-93 (5th Cir.), *cert. denied*, 396 U. S. 901 (1969) (failure to discharge official duty due to negligence held actionable); *Lynch v. United States*, 189 F. 2d 476, 480 (5th Cir.), *cert. denied*, 342 U. S. 831 (1951) ("failure by inaction to discharge official duty may constitute a denial of equal protection of the laws"); Sixth Circuit: *Smith v. Ross*, 482 F. 2d 33, 36 (6th Cir. 1973) ("law enforcement officer can be liable under § 1983 when by his inaction he fails to perform a statutorily imposed duty to enforce the laws equally and fairly"); *Azar v. Conley*, 456 F. 2d 1382, 1387 (6th Cir. 1972) (Section 1983 applicable

"From a legal standpoint, it makes no difference whether the plaintiffs' constitutional rights are vio-

56. (Cont'd.)
in cases of acts of omission as well as commission by police and public officials); *Peek v. Mitchell*, 419 F. 2d 575, 579 (6th Cir. 1970) (citing with approval *Schnell v. City of Chicago* while affirming the dismissal of a conclusory complaint as insufficiently detailed); Seventh Circuit: *Byrd v. Brishke*, 466 F. 2d 6, 10-11 (7th Cir. 1972) [citing *Monroe v. Pape* and holding actionable both misfeasance and nonfeasance: "We believe it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. *That responsibility obviously obtains when the nonfeasor is a supervisory officer to whose direction misfeasor officers are committed.*" (emphasis added)]; *Schnell v. City of Chicago*, 407 F. 2d 1084 (7th Cir. 1969); Eighth Circuit: *Floyd v. Trice*, 490 F. 2d 1154, 1157 (8th Cir. 1974) (superintendent of schools is a proper party when it is alleged the schools he heads are guilty of discriminatory policies); *Jennings v. Davis*, 476 F. 2d 1271, 1275 (8th Cir. 1973) ("Where . . . one has an affirmative duty to act and he fails to act accordingly, he may be held liable for his nonfeasance if his omission is unreasonable under the circumstances."); Tenth Circuit: *Dewell v. Lawson*, 489 F. 2d 877, 881 (10th Cir. 1974) (police chief can be held liable under Section 1983 for failure to perform duty of establishing certain procedures which resulted in deprivation of plaintiff's civil rights); *Downie v. Powers*, 193 F. 2d 760, 763-65 (10th Cir. 1951) (failure of chief of police or other city officials to preserve order and to make Jehovah's Witnesses secure in their rights to peaceably assemble can be actionable); D. C. Circuit: *Carter v. Carlson*, 447 F. 2d 358, 365 (D. C. Cir. 1971), *rev'd on other grounds sub nom. District of Columbia v. Carter*, 409 U. S. 418 (1973) (supervisory officers may be held liable under Section 1983 for negligence in supervising their subordinates where such failure results in deprivation of plaintiff's rights by subordinates); *see also Boyd v. Gullett*, 64 F. R. D. 169, 173 (D. Md. 1974); *Green v. Cauthen*, 379 F. Supp. 361, 369-70 (D. S. C. 1974); *Moon v. Winfield*, 368 F. Supp. 843, 845 (N. D. Ill. 1973); *Downs v. Department of Public Welfare*, 368 F. Supp. 454, 464 (E. D. Pa. 1973); *Handschu v. Special Services Division*, 349 F. Supp. 766, 771 (S.D.N.Y. 1972); *Wilgus v. Peterson*, 335 F. Supp. 1385, 1390 (D. Del. 1972); *Hernandez v. Noel*, 323 F. Supp. 779, 783-84 (D. Conn. 1970); *Huey v. Barloga*, 277 F. Supp. 864 (N. D. Ill. 1967); *Cunningham v. Grenada Municipal Separate School District*, 11 Race Rel. L. Rep. 1776, 1782 (N. D. Miss. 1966); *Hicks v. Knight*, 10 Race Rel. L. Rep. 1504 (E. D. La. 1965); Shapa, *Constitutional Tort: Monroe v. Pape and the Frontiers Beyond*, 60 Nw. U. L. Rev. 277, 279-82 (1966).

> lated as a result of police behavior which is the product of the active encouragement and direction of their superiors or as a result of the superiors' mere acquiescence in such behavior. In either situation, if the police officials had a duty, as they admittedly had here, to prevent the officers under their direction from committing the acts which are alleged to have occurred . . . , they are proper defendants in this action." [57]

This principle is firmly grounded in the social and legislative history of 42 U. S. C. § 1983 and the exposition of that history in *Monroe v. Pape*, 365 U. S. 167 (1961).[58]

57. Although defendants' involvement in unconstitutional police conduct would be sufficient to support an award of damages, it should be noted that where, as in the present cases, equitable relief is sought as opposed to monetary damages, the degree of personal participation necessary to support the grant of relief is not as great. *Inmates of the Suffolk County Jail v. Eisenstadt*, 494 F. 2d 1196, 1199 (1st Cir.), *cert. denied*, 419 U. S. 977 (1974); *Adams v. Pate*, 445 F. 2d 105, 107 n. 2 (7th Cir. 1971); *Schnell v. City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969); *Downs v. Department of Public Welfare*, 368 F. Supp. 454, 464 (E. D. Pa. 1973); *Jennings v. Davis*, 339 F. Supp. 919, 921 (W. D. Mo. 1972), *aff'd*, 476 F. 2d 1271 (8th Cir. 1973); *Wilgus v. Peterson*, 335 F. Supp. 1385, 1390 (D. Del. 1972); *Hernandez v. Noel*, 323 F. Supp. 779, 783 (D. Conn. 1970). Defenses of official immunity and good faith, which have often been held to protect certain public officials from liability for damages under Section 1983, have generally not been extended to claims or actions seeking injunctive relief. *Wood v. Strickland*, 95 S. Ct. 992, 997 n. 6 (1975); *Boyd v. Adams*, Civil No. 74-1337 (7th Cir., March 27, 1975); *Rowley v. McMillan*, 502 F. 2d 1326, 1331-32 (4th Cir. 1974); *Conover v. Montemuro*, 477 F. 2d 1073, 1082-83 n. 5 (3d Cir. 1973) (en banc) and cases cited therein; *Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972).

58. We note also that the Philadelphia Home Rule Charter itself provides an additional statutory mandate of police supervision and discipline. Chapter 2, Section 5-200 provides, *inter alia*, that "[t]he Police Department shall have the power and its duty shall be to perform the following functions:

> (a) *Law Enforcement.* It *shall* preserve the public peace, prevent and detect crime, police the streets and highways and enforce traffic statutes, ordinances and regulations relating

> "It is abundantly clear that one reason the legislation [Section 1983] was passed was to afford a federal

58. (Cont'd.)

> thereto. The Department shall at all times aid in the administration and enforcement within the City of the statutes of the Commonwealth of Pennsylvania and the ordinances of the City.
>
> (b) *Maintenance of the Philadelphia Police.* The Department shall train, equip, maintain, *supervise and discipline* the Philadelphia Police" (emphasis added).

The Annotation to the Charter states that "[t]he training, equipment, maintenance, supervision and discipline of the Philadelphia Police is expressly provided for because each of these is a necessary prerequisite of an adequate and competent police force." Annotation No. 3, Section 5-200, Philadelphia Home Rule Charter.

The case of *Fernelius v. Pierce*, 22 Cal. 2d 226, 138 P. 2d 12 (1943) involved a similar statutory duty, although it was not a Civil Rights Act case. The statutory duty there was imposed by the City Charter of Oakland, California. The California Supreme Court analyzed in detail the implications of the disciplinary power, as well as the defendants' contention, not made here, that the existence of civil service appeal procedures absolved them of final responsibility for disciplinary decisions:

> "But if it were known, as averred here, that there were persons who actually possessed and indulged such propensities, the deliberate toleration of such persons on a police force by those having such knowledge and the power and duty to remove them appears to be without legal justification. It is a specious argument which would immunize any officer and employee for neglect to perform his own clear duty merely because potentially his proper act could be rendered nugatory by the improper act of a board or officer having a higher authority. Particularly is this true where, as here, the power and duty to initiate the basic and effective action are vested exclusively in the officers sought to be charged. In the Charter of the City of Oakland no provision has been called to our attention under which the unfit officers could have been removed except by action of these defendants, and it has not been suggested that any officers other than defendants owed any duty or had the power to remove them.
>
> The law giving to a superior officer the power to suspend or remove subordinates would be little more than a contribution to the ego of the superior if it did not likewise place on him the correlative duty of vigilantly exercising that power in the protection of the public interest. Against bestiality and brutality by police officers of the type depicted in this case the public has no adequate protection unless the superiors

right in the federal courts because, by reason of prejudice, passion, *neglect,* intolerance *or otherwise,* state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."

• • •

"Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape, supra,* 365 U. S. at 180, 187 (emphasis added).

Cf. Burton v. Wilmington Parking Authority, 365 U. S. 715, 725 (1961).[59]

Defendants improperly attempt to characterize plaintiffs' case and the District Court's findings as being based on a "theory of administrative inefficiency or inadequacy" rather than constitutional violation (Pet. Br. 18). In so doing, defendants refuse to acknowledge the basic duty imposed upon them as public officials, the duty to protect the citizens of Philadelphia from violation of their constitutional and legal rights, and they ignore the District Court's specific findings with respect to their failure to fulfill their duty to the public by punishing or preventing recurrent police abuses. Failure of defendants to supervise and control the police in a manner that effectively

58. (Cont'd.)
are answerable for any lack of vigilance in the discharge of their duty." 22 Cal. 2d at 240-41, 138 P. 2d at 21 (emphasis omitted).

59. In another context, this Court just last Term held that a corporate officer may be found criminally liable when there is evidence that he had, "by reason of his position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct, the violation complained of, and that he failed to do so." *United States v. Park,* 43 U. S. L. W. 4687, 4692 (U. S. June 9, 1975).

detects and disciplines officers who abuse citizens' rights is itself a constitutional violation particularly where defendants' conduct permits frequent and recurring police abuses to prey on citizens.

That defendants abdicated their responsibility is evident from the inadequacies in the procedures and practices developed and supervised by them for handling citizen complaints and their failure to provide any other effective method of detecting and preventing police violations of rights. Aside from the fact that it is defendants' policy to discourage the filing of such complaints, the existing departmental disciplinary procedures admittedly are not framed to cover violations of legal and constitutional rights of citizens (A 124a, 128a, 357 F. Supp. at 1318, 1320; Pet. Br. 39). Contrary to defendants' argument, their failure to detect and prevent police abuses is not a matter of the wisdom of executive discretion or administration (Pet. Br. 20-22) but rather represents a failure of defendants to abide by their constitutional obligation to protect the rights of citizens. As this Court has held,

"no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be." *Burton v. Wilmington Parking Authority,* 365 U. S. 715, 725 (1961).

Defendants do not challenge the findings of the District Court with respect to patterns of abuses found, the existing complaint procedure, or the failure of city authorities to detect or prevent police abuses (A 69a-71a, 124a, 126a, 357 F. Supp. at 1292-93, 1318, 1319). Nor do they contend that there has been any reduction in the level of police violation of rights or any change in internal police

disciplinary procedures under their administration.[60] Moreover, defendants do not assert that the problem of police violation of citizens' constitutional rights is being handled by them in any other manner.[61] Rather, defendants in effect ask this Court to reverse the relief the lower courts found to be necessary and appropriate "to prevent future abuses" (A 130a, 357 F. Supp. at 1321) on the ground that whether or not city officials choose to protect citizens from police crimes is a matter of local executive

60. Although a new Mayor took office while these cases were pending before the District Court, two of the original defendants continued as defendants following the ordered substitution of parties. For example, defendant Rizzo, the present Mayor, had previously been Police Commissioner. Unlike *Spomer v. Littleton*, 414 U. S. 514 (1974), plaintiffs have sought injunctive relief against certain present defendants and have alleged and established that it is the *policy* of the offices held by defendants to fail to detect and prevent police violation of rights. These are cases in which effective relief calls for corrective behavior by those having official status and power rather than those who have lost that status and power through ceasing to hold office.

The relief sought in these cases is similar to *Lankford v. Gelston*, 364 F. 2d 197, 205 n. 9 (4th Cir. 1966) in which the Court of Appeals noted that although the Police Commissioner who had been in office at the time of the widespread illegal searches at issue had retired, the injunction could issue against his successor in office who would be substituted as a defendant.

> "Our concern is not with the person who happens to hold the office at a particular time, but with the office. The named defendant is only a nominal party, and the real aim of the proceeding is not to reach the Commissioner individually but to forbid an evil practice that has long and notoriously persisted in the Police Department."

Cf. Webster v. Fall, 266 U. S. 507 (1925) (holding that superior official is an indispensable party where injunction seeks to compel action only the superior had authority to take).

61. When offered the opportunity at a post-hearing conference in the District Court in January, 1973, defendants did not produce evidence of "any pertinent changes in procedures, or other relevant circumstances" which may have occurred since the briefs were filed in November, 1970 (*Goode*) and March, 1971 (*COPPAR*) nor did defendants otherwise request the reopening of the hearings (A 120a n. 1, 357 F. Supp. at 1317 n. 1).

discretion with which the federal courts cannot interfere. According to defendants, the only remedy lies with the electorate and as the present Mayor has been duly elected by the Philadelphia voters, his mandate carries with it the authority to exercise discretion to ignore the Constitution of the United States (Pet. Br. 20-21 & n. 15).

The authority and discretion vested in state and local officials has never extended to the sanctioning of the violation of citizens' rights, the very state of affairs found by the District Court to exist in the present cases. *See, e.g., Scheuer v. Rhodes*, 416 U. S. 232, 248-50 (1974). Defendants' argument is at fundamental variance with the basic tenets of our political and judicial systems which are founded on the propositions that we have "a government of laws and not of men"[62] and the Constitution is the "supreme Law of the Land."[63]

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Board of Education v. Barnette*, 319 U. S. 624, 638 (1943).

62. Massachusetts Declaration of Rights; *see* discussion in *United States v. United Mine Workers*, 330 U. S. 258, 307-9 (1947) (Frankfurter, J., concurring).

63. U. S. Constitution, Article VI; *Marbury v. Madison*, 5 U. S. (1 Cranch) 137, 177 (1803); *Cooper v. Aaron*, 358 U. S. 1 (1958) and concurring opinion of Justice Frankfurter.

See also Lucas v. Colorado General Assembly, 377 U. S. 713, 736-37 (1964); *Monroe v. Pape, supra*, 365 U. S. at 182-83.

Defendants distort the nature of the present cases by characterizing them as suits challenging the wisdom of executive administration and seeking revision of internal departmental procedures (Pet. Br. *e.g.*, 27). Although the inadequacies of existing complaint procedures became an issue in the cases as evidence of both official indifference to police abuses and the unavailability of remedies to effectively detect and prevent such abuses, the principal focus of the cases was the recurrent violation of rights and official acquiescence in those violations. Plaintiffs did not seek relief in the federal courts because they abstractly questioned the administrative wisdom of existing complaint procedures. Rather, plaintiffs filed these actions because they had been physically assaulted and unlawfully detained by Philadelphia police officers, and they wanted to prevent such abuses in the future.

Unlike the cases [64] relied on by defendants to support their argument that plaintiffs lack standing to sue, plaintiffs in the present actions have been the victims of the most direct type of "concrete injury" [65]—physical assaults and detentions. Thus, for example, Gerald Goode, a named plaintiff, established that he had been subjected to an illegal arrest and beating by police officers which the District Court found to constitute a "flagrant violation of the law and the Constitution." (A 75a-78a, 357 F. Supp. at 1295-97). Herbert Brown, another named plaintiff, alleged in the complaint and established that he had been

64. *O'Shea v. Littleton*, 414 U. S. 488 (1974); *Laird v. Tatum*, 408 U. S. 1 (1972); Ex parte *Levitt*, 302 U. S. 633 (1937); *see* Pet. Br. 19, 27.

65. *Schlesinger v. Reservists to Stop the War*, 418 U. S. 208, 220-21 (1974).

subjected to an illegal beating by the police (A 18a, 80a, 357 F. Supp. at 1297-98). Similarly other plaintiffs established that they had also been unlawfully arrested and/or assaulted by police officers.[66] Moreover, the District Court determined that plaintiffs could represent the class of all residents of the City of Philadelphia and an included class of all black residents of Philadelphia (A 24a).[67]

Contrary to defendants' argument, plaintiffs have suffered and are threatened with direct and concrete injury as a result of defendants' acquiescence in police lawlessness. An individual is no less directly injured by an official who knows or should have known of his subordinate's repeated illegal acts and fails to take any action to prevent them than he is by the official who orders his subordinate to commit the acts. The rights and liberties secured by the Constitution must be vigilantly protected by the courts both against those who strike the blows and those who, although responsible for preventing such acts, fail to do so. Having established a pattern of recurring and predictable violation of their constitutional rights and the failure of defendants, the responsible city officials, to prevent such abuses, plaintiffs were entitled to equitable relief.

66. *See, e.g.*, Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Oliver & Linda Locke, A 107a-9a, 357 F. Supp. at 1310-11; Mark Soto, A 111a-13a, 357 F. Supp. at 1312-13; Boccuto and Dignetti, A 114a-16a, 357 F. Supp. at 1314; *see also* n. 3, *supra*.

67. In *Allee v. Medrano*, 416 U. S. 802, 816 n. 10 (1974), this Court held that "as to this portion of the decree, directed at police misconduct generally rather than to any particular state statute, named plaintiffs intimidated by misconduct may represent all others in the class of those similarly abused. . . ." As long as defendants fail to discharge their obligation to detect and effectively deal with recurring police misconduct, all residents of Philadelphia, and particularly all black residents, are threatened with illegal arrests and physical abuse by the police.

II. The Relief Granted Was Consistent With the Problem to Be Remedied, the Absence of Effective Alternatives, and the Need to Protect the Public Interest Involved.

Having concluded that equitable relief was necessary and appropriate to prevent future abuses, the trial court had wide discretion to tailor the injunctive decree to the particular factual situation so as to secure, as expeditiously and effectively as possible, the vindication of constitutional rights.[68] As Chief Justice Burger, speaking for a unanimous Court, pointed out:

> "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U. S. 1, 15 (1971).

Accordingly, the framing of such decrees should take place in the trial rather than appellate courts, as the trial court alone is most familiar with the circumstances present

68. *See, e.g., Lemon v. Kurtzman,* 411 U. S. 192, 200-1 (1973); *Reynolds v. Sims,* 377 U. S. 533 (1964); *Griffin v. County School Board of Prince Edward County,* 377 U. S. 218, 232-34 (1964); *Baker v. Carr,* 369 U. S. 186 (1962); *Brown v. Board of Education,* 349 U. S. 294, 300 (1955).

In the antitrust area, it is firmly established that district courts have the power to grant relief appropriate to the factual situation. In construing Section 4 of the Sherman Act, 15 U. S. C. § 4 (1970), which gives the federal courts power to enjoin antitrust violations, this Court has held that the "essential consideration [governing remedial injunctive relief] is that the remedy shall be as effective and fair as possible in preventing continued or future violations . . . in the light of the facts of the particular case." *United States v. National Lead Co.,* 332 U. S. 319, 335 (1947). Remedial power is broader still in civil rights cases, where the federal courts are under statutory mandate to fashion efficient remedies for violations of vital constitutional rights. 42 U. S. C. § 1988 (1970); *see Basista v. Weir,* 340 F. 2d 74 (3d Cir. 1965).

and options available in the particular case. *International Salt Co. v. United States,* 332 U. S. 392, 400-11 (1947); *see also Swann v. Charlotte-Mecklenburg Board of Education, supra,* 402 U. S. at 27 n. 10. Given the trial court's broad discretion, "appellate review is correspondingly narrow." *Lemon v. Kurtzman,* 411 U. S. 192, 200 (1973).

The proper judicial standards for evaluating the relief granted are as follows: first, was the scope of the relief consistent with the scope of the problem it was intended to remedy; second, was the form of the relief consistent with the presence or absence of effective alternatives; and third, can it fairly be said that relief granted was consistent with the need to protect the public interest involved. *See Swann v. Charlotte-Mecklenburg Board of Education, supra,* 402 U. S. at 15-16.

A. The Scope of the Relief Was Clearly Consistent With the Scope of the Problem to Be Remedied.

The District Court found that a "pattern of frequent police violations of rights" existed,[69] that the defendants did little or nothing to prevent the recurrence of such violations and that existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints were "totally inadequate." (A 124a, 126a, 357 F. Supp. at 1318, 1319).

69. This pattern was found to be in part the result of the belief held by a "substantial number of policemen"

> "(a) that if an individual is freed without formal charges within 24 to 48 hours after his initial arrest, he should not object to the inconvenience involved; (b) that a person who questions the propriety of police conduct, or refuses to cooperate with the police, should expect to be inconvenienced, or worse; and (c) that if it is ultimately established that there was probable reason to believe an individual guilty of an offense, his treatment at the hands of the police should be judged by different standards than those applicable to the innocent." (A 122a-23a, 357 F. Supp. at 1317-18).

> "There are four principal defects in the present arrangement. (1) The departmental procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians; (2) Complaints are handled on a 'chain of command' basis, and this results in a tendency to minimize and discourage civilian complaints; (3) The existing procedures do not provide adequate opportunity for the civilian complainant to present his case, before a relatively objective tribunal; and (4) The outcome of the proceeding is not disclosed." (A 128a, 357 F. Supp. at 1320).[70]

The District Court concluded that "the establishment of adequate procedures for handling and adjudicating civilian complaints against the police would go far to prevent further abuses, and to reduce the friction which the existing procedures, or lack of procedures, generate." (A 128a, 357 F. Supp. at 1320). In doing so, it specifically noted that it was *not* deciding that plaintiffs had a constitutional right to improved department procedures (A 130a, 357 F. Supp. at 1321). Rather, given defendants' failure to prevent recurring violations and given the demonstrated inadequacies of the existing complaint procedures, the District Court concluded that revision of the complaint procedures would be effective in achieving that to which plaintiffs were constitutionally entitled – the elimination of future abuses.

70. One of the means by which the department discourages the filing of citizen complaints is the department's practice of failing to record citizen complaints unless submitted in writing and the unavailability of forms for filing such complaints (A 69a, 357 F. Supp. at 1292). Moreover, when complaints are filed, the department minimizes the consequences of proven police misconduct (A 70a, 357 F. Supp. at 1293).

In conformity with its findings of fact, the trial court required defendants to submit for court approval a comprehensive program for dealing adequately with citizen complaints alleging police misconduct.[71] The court suggested that certain guidelines should be carefully

71. Requiring the defendants to submit an authorized plan in accordance with the District Court findings is by no means an unusual occurrence in the federal court system. "In school desegregation cases, courts have frequently required school boards to submit plans which can serve as a useful focus for analysis, criticism, and improvement. [citations omitted]." *Morgan v. Kerrigan*, 509 F. 2d 618, 620 (1st Cir. 1975); *see also Hawkins v. Town of Shaw, Mississippi*, 461 F. 2d 1171 (5th Cir. 1972), *aff'g en banc*, 437 F. 2d 1286 (5th Cir. 1971) (requiring defendants to submit a plan to cure discrimination against blacks in the provision of municipal services); *Castro v. Beecher*, 459 F. 2d 725, 729 (1st Cir. 1972) (court required submission of a plan to correct discriminatory police hiring practices); *Morales v. Turman*, 383 F. Supp. 53, 126 (E. D. Tex. 1974) (parties required to submit a plan for remedying violations of rights of juveniles involuntarily committed to the custody of the state); *Martinez v. Procunier*, 354 F. Supp. 1092 (N. D. Cal. 1973), *aff'd*, 416 U. S. 396 (1974) (requiring submission of new regulations relating to censorship of prisoners' mail and attorney-client interviews at prison conducted by law students or other paraprofessionals); *Jones v. Wittenberg*, 330 F. Supp. 707 (N. D. Ohio 1971), *aff'd sub. nom. Jones v. Metzgel*, 456 F. 2d 854 (6th Cir. 1972) (defendants required to submit proposals in accordance with detailed standards set by the court in order to eliminate unconstitutional conditions at county jail); *Wolin v. Port of New York Authority*, 268 F. Supp. 855 (S. D. N. Y. 1967), *aff'd*, 392 F. 2d 83 (2d Cir.), *cert. denied*, 393 U. S. 940 (1968) (ordering defendants to submit for court approval internal administrative directives to cure the enforcement abuses found by the court to exist concerning distribution of political leaflets in public terminal). Bankruptcy judges are required by statute to review and approve detailed plans submitted by debtors, creditors and others for disposition of property. *See, e.g.*, 11 U. S. C. §§ 574, 621 (1970). In antitrust cases, extensive and detailed relief has been predicated upon proposals requested from the parties. *See, e.g., United States v. Ford Motor Co.*, 315 F. Supp. 372 (E. D. Mich. 1970), *aff'd*, 405 U. S. 562 (1972) (proposed orders submitted concerning proper relief to be granted for violation of section 7 of the Clayton Act; divestiture and prohibition of certain other activities ordered).

considered in such formulation [72] (A 129a, 357 F. Supp. at 1321). Each of the guidelines suggested would appear beyond challenge, *as they track precisely the deficiencies in the present system which the court found to exist* – findings, we hasten to add, which were based on as full a record as we believe any court has heard on the issues in question.

In response to the District Court's Order, defendants submitted for approval a complaint and disciplinary procedure in the form of an internal police department directive (Directive 127).[73] The proposal represented a revision to the existing Directive 127. As a result of counterproposals by plaintiffs, numerous conferences, and

72. The guidelines set forth by the court were:

"(1) Appropriate revision of police manuals and rules of procedure spelling out in some detail, in simple language, the 'dos and don'ts' of permissible conduct in dealing with civilians (for example, manifestations of racial bias, derogatory remarks, offensive language, etc.; unnecessary damage to property and other unreasonable conduct in executing search warrants; limitations on pursuit of persons charged only with summary offenses; recording and processing civilian complaints, etc.); (2) Revision of procedures for processing complaints against police, including (a) ready availability of forms for use by civilians in lodging complaints against police officers; (b) a screening procedure for eliminating frivolous complaints; (c) prompt and adequate investigation of complaints; (d) adjudication of non-frivolous complaints by an impartial individual or body, insulated so far as practicable from chain of command pressures, with a fair opportunity afforded the complainant to present his complaint, and to the police officer to present his defense; and (3) prompt notification to the concerned parties, informing them of the outcome." (A 129a, 357 F. Supp. at 1321).

73. In supporting their argument of undue judicial intervention, defendants have pointed to the fact that the relief is framed in the form of a Police Department directive and is quite detailed. It should be kept in mind, however, that it was the *defendants themselves* who first proposed the form. Plaintiffs and the court merely proposed or ordered changes in the Department directive submitted by them to the court for its approval. In light of this background, they should not be heard to say that the form is defective or that it deals with the subject in too great detail.

its own review, the District Court added provisions which, in its view, were indispensable to the establishment of an adequate investigatory and review system for detecting and preventing police abuses. These ordered amendments, most importantly, were in areas as to which the trial record reflected marked deficiencies in the present system and to which defendants' proposed new Directive 127 was not addressed: that investigative procedures used for crimes committed by private citizens not be shortened or abbreviated in investigating police crimes; that improper chain of command influence be eliminated to the extent practicable; [74] that reasonable time limits be placed on the period of investigation; that the responsibility of individual investigative officers be pinpointed as closely as possible to assure adequate implementation and review; and that provisions for anonymous complaints, for standards of disposition of complaints, and for maintenance of records all be adequate. In addition, the court's amendments *added* a provision for easy screening and disposition of frivolous complaints, a feature which the court's opinion mentioned (A 129a, 357 F. Supp. at 1321), but which defendants' revised Directive did not include.

The final judgment (App. Cert. Pet. 20a-23a) directed defendants to implement a directive "substantially in the form of" the court approved directive. Again, the provisions of the final judgment, including the nature of the information which complainants should provide, and the need for adequate distribution and maintenance of records, merely reflected the findings of fact which the court had made earlier.

74. In this context we note the lower court's reference to similar problems in the military justice system, A 130a, 357 F. Supp. at 1321. We note further this reference was made in support of, rather than in derogation of, the important role the Police Commissioner must and should play in disciplinary matters.

Defendants' principal objection to the form of relief granted is that it "seriously effects [*sic*] the entire police function." (Pet. Br. 29). Defendants attempt to support this claim with a rather detailed account of the way in which the final judgment will interfere with police operations (Pet. Br. 29-35). Despite the specificity of their contentions, defendants fail to cite a single reference in either the voluminous record of this case or any other source which supports their prediction as to the impact of the final judgment on police operations.

The reason for this lack of authority is simple. Defendants never before raised these specific objections either during the lengthy hearings or numerous conferences with the court prior to the entry of final judgment. Although defendants were well aware of the intended scope and nature of the final judgment through the post-hearing conferences with the District Court, defendants never sought to present evidence concerning the purported unworkability of the relief. After the final judgment had issued, defendants never filed a motion to reconsider the form of relief setting forth the matters now raised in this Court nor did they complain about the "effect on the operations room" to the Court of Appeals. Moreover, the general, conclusory contention raised by defendants below that the relief would improperly "interfere" with police operations was rejected by the lower courts which were both concerned with minimizing intrusion into police activities (A 127a-30a, 357 F. Supp. at 1320-21; App. Cert. Pet. 11a-12a, 506 F. 2d 547-48.)

Despite the numerous opportunities for defendants to have raised and detailed their specific objections to the impact of the final judgment, they failed to do so. Rather, defendants raise these issues for the first time here in an effort to overturn the grant of *any* relief on the basis

of unsubstantiated conclusions which should be the subject of the trial court's review and evaluation and which, even if valid, would only call for modifications to specific aspects of the decree rather than the denial of all relief. Defendants' claims are not properly raised in this Court.

> "Our jurisprudence teaches that we should decide issues on the basis of facts of record." *Wainwright v. City of New Orleans*, 392 U. S. 598, 600 (1968) (concurring opinion).

This Court has dismissed writs of certiorari as improvidently granted where further review of the case has indicated that the record is inadequate or insufficient as a basis for deciding the issues raised by petitioners.[75] In this case as well, defendants should not be allowed to disrupt the orderly process of judicial review by asking this Court to rule on constitutional questions in the absence of *any* evidence in the record to support defendants' factual claims raised for the first time in this Court (claims which plaintiffs would seriously contest if presented in the proper forum).

Moreover, the validity of defendants' objections must be questioned in view of the fact that many of the chal-

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75. As stated by Justice Fortas concurring in such a dismissal of a writ of certiorari:

> "The Court's disposition of this case is based upon the sound premise that we should not use our certiorari jurisdiction to express our views on a point in a case which we cannot dispose of because of inadequacies of the record which cannot realistically be remedied." *Massachusetts v. Painten*, 389 U. S. 560, 562 (1968).

See also McClanahan v. Morauer & Hartzell, Inc., 404 U. S. 16 (1971); *Taggart v. Weinacker's, Inc.*, 397 U. S. 223 (1970); *Wainwright v. City of New Orleans*, 392 U. S. 598 (1968); *Gilbert v. California*, 388 U. S. 263, 269 (1967); *Smith v. Mississippi*, 373 U. S. 238 (1963); *Neddelman v. United States*, 362 U. S. 600 (1960); *Mitchell v. Oregon Frozen Foods Co.*, 361 U. S. 231 (1960).

lenged aspects of the relief were either initially proposed by defendants themselves or are similar to existing police procedures. For example, defendants complain the judgment requires that complaints be filed in the operations room of each police district and that the operations room supervisor is required to assist in the completion of the complaint forms. They contend that although the staff of the operations room could handle the new duties with respect to complaint forms "[u]nder normal circumstances," the staff would "probably" have to be augmented during periods of heavy police and criminal activity when it "can be expected" that there will be frequent complaints. The "probable result of the decree" according to defendants "will be to reduce the police presence on the street during the periods of greatest need in order to increase the operations room staff." (Pet. Br. 31-32).

Apart from the speculative and unsubstantiated nature of defendants' argument, the source of the potential problem appears to be the fact that complaint forms are to be completed and filed in the operations room with the assistance of the operations supervisor. *This feature of the final judgment was taken verbatim from defendants' proposed order submitted on April 12, 1973.* (*Compare* A 135a, II.A *with* App. Cert. Pet. 25a, II.A).[76] Is this Court therefore to conclude that defendants, given their knowledge and concern for the effectiveness of police operations, would propose a procedure for handling the receipt of complaints the inevitable result of which would be the "misallocation of police personnel," (Pet. Br. 32) or should the Court disregard defendants' belated objection and affirm the courts below, thus allowing the case to return to the District Court where defendants could

76. Even the existing procedures for handling citizen complaints set forth in the March 1967 Directive 127 provided for complaints to be brought to the attention of the operations room supervisor (A 143a, II.A).

make application for any modification they could prove was proper?[77]

Defendants also contend that the final judgment intrudes upon the many duties of the Police Commissioner requiring the Commissioner or a Deputy Commissioner to personally review all investigatory files of citizen complaints certified[78] to them by the Chief Inspector of the Internal Affairs Bureau. Defendants note, in a continuation of their discussion *dehors* the record, that in 1974 the Police Department received approximately 1,200 complaints of police misconduct and therefore the Commissioner or Deputy Commissioner would be required to review 23 files per week, an unreasonable burden according to defendants (Pet. Br. 33-34). They further object to the "creation of [a] superfluous tribunal" to which cases involving factual disputes regarding the incident are to be presented (Pet. Br. 34).

Defendants fail to point out that under *existing procedures,* the Police Commissioner is supposed to receive an investigation report concerning all recorded complaints (A 69a-71a, 357 F. Supp. at 1292-93) and therefore in 1974, he probably found time, consistent with his other duties, to review 23 reports per week. Defendants also fail to mention that the "superfluous tribunal" to which they object is the *existing Police Board of Inquiry* which on occasion presently decides cases of citizen complaints against the police at "trial-type hearings." When these occur they include presentation of the complaint by a "police advocate" and representation of the accused officer

77. Paragraph 7 of the final judgment provides that the District Court shall retain jurisdiction to modify the order and grant such further relief as may be appropriate, upon the application of any party in interest (App. Cert. Pet. 23a).

78. Complaints determined by the investigator and Chief Inspector to be frivolous are not to be forwarded to the Police Commissioner (App. Cert. Pet. 31a-32a).

by counsel (A 70a-71a, 357 F. Supp. at 1293). The similarities between defendants' existing procedures and the portions of the final judgment objected to by defendants suggest that their unsupported predictions concerning interference with police operations are not valid and should first be subject to evaluation by the trial court before this Court is asked to consider them as a basis for reversal of an order approved by two lower courts.[79]

In setting forth their claim that the final judgment interferes with police operations, defendants totally ignore the reason the District Court found it necessary to enter the decree in the first place, *i.e.*, defendants' failure to detect and prevent police violations of constitutional rights. "Judicial authority enters only when local authority defaults." *Swann v. Charlotte-Mecklenburg Board of Education, supra*, 402 U. S. at 16. Every judicial grant of relief is intended to "interfere" with existing conditions to some extent, for if existing conditions were satisfactory, no relief would have been necessary. The propriety of the relief must be evaluated in light of the nature of the violation found to exist. *Swann v. Charlotte-Mecklenburg Board of Education, supra.* Where constitutional rights have been found subject to frequent violations as a result of defendants' policies and practices, the District Court has broad equitable power to fashion relief to effectively protect such rights in the future. Moreover, protestations of "interference" have not prevented courts from granting

79. Defendants' other specific objections concerning procedures for investigating complaints relative to crimes, the requirement to obtain written, signed statements from all participants and witnesses, and the requirement that investigations be completed within 45 days from the date of receipt of the written complaint (Pet. Br. 31-33) are the type of specific objections which should be addressed to the trial court in support of a motion to modify the final judgment. Defendants never raised these points at the time they participated in the drafting of the decree, and the validity of these objections has never been tested.

detailed equitable relief in cases involving unlawful actions by the police.[80]

Unlike the cases of *O'Shea v. Littleton*, 414 U. S. 488 (1974) and *Gilligan v. Morgan*, 413 U. S. 1 (1973), relied on by defendants, the relief granted in the present cases neither disrupts state criminal proceedings nor constitutes a continuing judicial surveillance of the Philadelphia police. *O'Shea* involved a claim that defendants, a magistrate and a state court judge, engaged in illegal bond-setting, sentencing, and jury-fee practices in state criminal cases which deprived plaintiffs of their constitutional rights. Citing the policy of restraint by federal courts in the issuance of injunctions against state criminal prosecutions set forth in *Younger v. Harris*, 401 U. S. 37 (1971), this Court concluded that the relief sought would violate that policy by disrupting the normal course of such state proceedings. The injunction requested would permit members of plaintiffs' class who were being prosecuted in the state courts to interrupt such proceedings in order to adjudicate claims of noncompliance by defendants with the federal court order. Moreover, this Court noted that the fact of such ongoing state proceedings provided plain-

80. *E.g.*, *Erie Human Relations Commission v. Tullio*, 357 F. Supp. 422, 426 (W. D. Pa. 1973), *aff'd as modified*, 493 F. 2d 371 (3d Cir. 1974) (hiring of police); *Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission*, 354 F. Supp. 778 (D. Conn.), *aff'd as modified*, 482 F. 2d 1333 (2d Cir. 1973) (hiring and promotion of police); *NAACP v. Allen*, 340 F. Supp. 703 (M. D. Ala. 1972), *aff'd*, 493 F. 2d 614 (5th Cir. 1974) (hiring of state police); *Allen v. City of Mobile*, 331 F. Supp. 1134 (S. D. Ala. 1971), *aff'd*, 466 F. 2d 122 (5th Cir. 1972), *cert. denied*, 412 U. S. 909 (1973), and *Baker v. City of St. Petersburg*, 400 F. 2d 294 (5th Cir. 1968) (both banning racial factors in decisions as to police personnel assignments, promotions or jurisdiction of command, and ordering specific administrative steps for the elimination of such factors). In these cases, the courts have generally retained jurisdiction and required reports in order to ensure compliance with the order and the effectiveness of the relief.

tiffs with a forum and legal remedies adequate to redress the alleged violations, such as the right to substitution of a judge, change of venue, and review on direct appeal or post conviction collateral review.

In the present cases, the relief ordered does not interfere with or involve ongoing state criminal proceedings. The complaint procedures are totally separate and independent from the state criminal process. Even if a complainant, who is also charged with a crime arising out of the incident, establishes that the police officer acted improperly, the only relief granted will be directed at disciplining the officer; the criminal proceeding against the complainant would not be affected.[81]

Similarly, the final judgment does not impose continuing judicial surveillance of all or any of the activities of the police department such as was requested with respect to the Ohio National Guard in *Gilligan v. Morgan, supra.* The relief sought in *Gilligan* provides a sharp contrast with the nature and basis of relief granted in the present cases. Plaintiffs in *Gilligan* requested continuing judicial surveillance of the training, weaponry and orders of the Ohio National Guard, including the setting of standards in these areas by the courts. Plaintiffs argued that such broad relief was necessary because of an isolated, albeit tragic, incident of alleged violations of students' rights by the Guard at Kent State University, although

81. To the extent the claim of police misconduct would also support a motion to suppress evidence (*e.g.*, illegal search) or for dismissal of the charges (*e.g.*, illegal arrest), these matters would have to be properly raised in the state criminal proceeding. Moreover, the final judgment specifically provides that a complainant or alleged victim of police misconduct who has been arraigned on criminal charges based upon events upon which the complaint is founded may elect not to give a statement to the investigator until final disposition, including appeal, of all such criminal charges. The investigation would then remain open until after such final disposition (App. Cert. Pet. 32a-33a).

there was no evidence of threatened recurrences of such events. This Court held that plaintiffs' claim did not present a justiciable controversy because the injunctive relief requested would embrace areas which were explicitly assigned by the Constitution to the control of the legislative and executive branches, specifically citing Article I, Section 8 which vests in Congress the power to organize, arm and discipline the militia.

In rejecting an argument that *Gilligan* bars suits seeking injunctions against police misconduct similar to that proposed by defendants herein, the Seventh Circuit noted that there is no provision in the Constitution analogous to Article I, Section 8 which would be applicable in a case involving an area within the control of a municipality rather than a co-equal branch of the federal government. Moreover, as demonstrated by this Court's decision in *Allee v. Medrano, supra,* 416 U. S. 802, injunctions against the police are appropriate when based on a persistent course of unconstitutional police conduct, a situation which was not present in *Gilligan. Calvin v. Conlisk,* Civil No. 74-1289 (7th Cir., June 30, 1975) (reversing dismissal of a complaint raising issues virtually identical to the present actions).

Unlike *Gilligan,* plaintiffs in the present cases presented convincing evidence of a pattern of recurrent and predictable police misconduct and official toleration of such abuses in the past. Based on the comprehensive and voluminous record produced, the District Court properly concluded that such abuses will continue to occur in the absence of the ordered equitable relief. Moreover, the relief ordered is to be administered solely by the Police Department, does not interfere with police discretion in their normal routines, and does not involve the federal courts in the supervision of the day-to-day operation of the

Police Department (A 127a-30a, 357 F. Supp. at 1320-21; App. Cert. Pet. 11a-12a, 506 F. 2d at 547-48). The District Court's role is limited to evaluating whether the program is effective and whether any modifications of the order are necessary to improve effectiveness or eliminate burdensome aspects of the relief upon application of any party (App. Cert. Pet. 23a).

B. The Form of the Relief Was Consistent With the Absence of Effective Alternatives.

The form of relief was the approval of, and order to implement, a system of internal investigation and review of complaints for the protection of Philadelphia's citizens. In granting this particular form of relief the trial court, as we indicate below, clearly did the following: first, it considered all feasible alternatives to remedy the problem at hand; second, given these alternatives, it selected the option which, based on the record, appeared to offer the greatest promise of effective relief; third, it made provision for evaluation in actual practice of the options selected; and, fourth, it allowed for possible modification, or the selection of other alternatives, should evaluation demonstrate that the remedy chosen is either too cumbersome on defendants or, on the other hand, ineffective as a remedy for plaintiffs. *Cf. Green v. County School Board of New Kent County,* 391 U. S. 430, 439 (1968) (school desegregation decree).

The trial court very clearly and painstakingly evaluated possible alternatives to the course actually adopted. The most drastic of these—imposition of external civilian control (by appointment of a master or other means as requested by plaintiffs in *COPPAR,* A 49a)—was rejected, not because the facts might not ultimately warrant it, but because in the court's view the defendants themselves

ought, in the first instance, to retain the responsibility for setting their own house in order.

> "[D]eference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." (A 127a, 357 F. Supp. at 1320).

See also A 129a, 357 F. Supp. at 1321.

The trial court also declined to issue a broad injunctive prohibition against all police infringements of federally secured rights, a course which would have subjected police officials to contempt adjudications for each such violation and would have given the court a continual monitoring role insofar as contempt proceedings were involved.[82] The District Court was well aware of the problems both in framing and enforcing this type of injunction as a result of its experience with the temporary restraining order

82.

"For tolerated constitutional violations, a prohibitory injunction which only ordered high police officials to refrain from unconstitutional conduct would be useless—the problem lies not in what such officials are doing but in what they are *not* doing. Purely prohibitory injunctions would have to be directed against the subordinate policemen who were acting illegally. But courts would be unable to enforce such injunctions unless they were willing to take over the task of disciplining individual policemen. Such an approach would be highly inefficient since the court's only means of enforcing its orders directly against policemen—a contempt proceeding—would be far too cumbersome and heavy-handed to deal effectively with large numbers of alleged violations.

If the injunction is to have any utility as a remedy for tolerated police abuse, it must require affirmative action by the officials responsible for police conduct." (emphasis in original; footnote omitted). Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L. J. 143, 147 (1968), quoted with approval in *Allee v. Medrano, supra,* 416 U. S. at 858-59 n. 20 (Burger, C. J., White and Rehnquist, J. J., dissenting).

entered at the outset of the *COPPAR* case (A 67a, 357 F. Supp. at 1291).[83] Although the trial court concluded that its order had been violated, it declined to hold defendants in contempt acknowledging that the violations may have been due "to a lack of precision in framing the injunctive order." (A 126a, 357 F. Supp. at 1319). Where there are many independent instances of violations of constitutional rights by the police, as in the present cases, it would be a difficult, if not impossible, task to draft an injunction with the desired specificity. Moreover, in one case in the District Court in which an explicit restraining order had been issued against the Philadelphia Police Department, numerous police officers and their superiors were found to have deliberately violated the order. *Farber v. Rizzo,* 363 F. Supp. 386 (E. D. Pa. 1973). Finally, the District Court took judicial notice of the consent injunctive decree entered in *Alexander v. Rizzo,* Civil No. 70-992 (E. D. Pa., Dec. 18, 1972) with respect to the abuses inherent in initial police contacts and arrests "for investigation" and concluded that this consent decree obviated the necessity for sweeping injunctive relief in the present cases[84] (A 67a-68a, 127a-28a, 357 F. Supp. at 1292, 1320).

The trial court deferred to the role which the Police Commissioner currently plays in disciplinary matters (A 130a, 357 F. Supp. at 1321). The opinion was replete with references to the difficult and sensitive nature of police work (A 121a-22a, 127a, 128a-29a, 357 F. Supp. at 1317, 1320), and the court was unwilling to impose some

83. *See* n. 6, *supra.*

84. With respect to the consent injunctive decree entered in *Alexander v. Rizzo,* the Court of Appeals noted,

> "We need not consider, nor did the district court, whether this consent decree has any collateral estoppel effect as to the existence of a pattern of misconduct by the police officers. Nevertheless, it was a factor to which the trial judge could give some weight in arriving at his findings." (App. Cert. Pet. 10a, 506 F. 2d at 547).

form of civilian review without giving the police themselves a reasonable opportunity to reduce the complained of abuses (A 129a, 357 F. Supp. at 1320).

In addition, the manner in which the trial court weighed these respective remedial options is a clear indication that the relief granted, in light of the voluminous record as to official indifference, appeared to the court to offer the greatest promise of effective relief. Finally, paragraphs 6 and 7 of the final judgment clearly anticipated evaluation and possible modification of the relief granted in the event of ineffectiveness and/or cumbersomeness.

Defendants contend that the District Court ignored available legal remedies which would adequately compensate individuals whose constitutional rights have been violated by public officials and which therefore obviate the need for equitable relief (Pet. Br. 37-44). The District Court, however, heard extensive expert testimony[85] concerning all existing remedies[86] and concluded they were "inadequate to protect the public interest involved." (A

85. Bernard L. Segal, an attorney whose eminent qualifications were admitted, stated: "There is positively no effective or meaningful remedy through presently established mechanisms for redress against abuses of police power directed toward an individual." *COPPAR* Record 904. Another expert witness, and member and chairman of the former Philadelphia Police Advisory Board, testified: "In my experience as a practicing attorney and as a person involved in this area, through my extra-legal activities, there isn't yet any legal remedy which effectively gives a citizen redress." *Goode* Record 655-56; *see also COPPAR* Record 913-15, 1051.

86. In addition to its review of existing police department citizen complaint procedures, the trial court made specific findings concerning relief available through the Commission on Human Relations (A 71a-72a, 357 F. Supp. at 1293-94); Police Advisory Board (A 72a, 357 F. Supp. at 1294) and criminal prosecution through the District Attorney's Office (A 73a, 357 F. Supp. at 1294). In 1969, both the Human Relations Commission and Police Advisory Board ceased to handle citizen complaints against the police. The Board, which had been established in 1958 by the Mayor to hear citizens' complaints against the police, was dissolved by Mayor Tate in 1969 (A 72a, 357 F. Supp. at 1294).

126a-27a, 357 F. Supp. at 1319). With respect to damage actions against public officials, the trial court found:

> "Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; *moreover, they have no preventive effect.*" (A 127a, 357 F. Supp. at 1319) (emphasis added).[87]

Moreover, the inadequacy of actions for money damages as a remedy for persons who establish that they have been denied their constitutional rights has been recognized by the courts. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 421-22 (1971) (Burger, C. J., dissenting); *Lewis v. Kugler*, 446 F. 2d 1343, 1350 (3d Cir. 1971); *Lankford v. Gelston*, 364 F. 2d 197, 202 (4th Cir. 1966); *see also* Comment, *Injunctive Relief for Violations of Constitutional Rights by the Police*, 45 Colo. L. Rev. 91, 94-97 (1973). Indeed, this Court has characterized such a remedy as "worthless and futile." *Mapp v. Ohio*, 367 U. S. 643, 651-52 (1961).

Damage actions against public officials suffer from numerous defects. Among these are the reluctance of juries to find police officers liable, especially when the plaintiff has been accused of criminal conduct,[88] the reluctance of private attorneys to handle police abuse cases,[89] the limited resources of civil rights organizations and similar groups to provide unpaid legal assistance to victims,[90] delay and backlog in the courts,[91] the practice of conditioning dismissal of criminal charges upon an agreement by a citizen not to prosecute the police civilly,[92] and the inability of monetary damages to adequately compensate for constitutional violations. The right to be secure in one's person and not to be subjected to unlawful police assaults, searches and seizures are rights which manifestly are not capable of valuation in terms of dollars and cents and therefore any violation of such rights constitutes irreparable injury. This fact has led a number of courts to find actions for damages to be inadequate in cases of constitutional violations by police.[93]

87. Significantly, defendants omitted the italicized portion of this sentence when they quoted it in their Brief (Pet. Br. 40).

88. *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 421-22 (1971) (Burger, C. J., dissenting).

89. *See* Testimony of Mercer D. Tate, *Goode* Record 658-59; Brief of the Commonwealth of Pennsylvania as *Amicus Curiae* at 16-17 (the Lawyer Reference Service in Philadelphia has been unable to obtain attorneys to handle police abuse cases and the Philadelphia Bar Association's special panel of volunteer attorneys to represent such clients consists of fewer than twenty-five attorneys).

The most critical deficiency of actions for damages is their lack of preventive effect. Damage actions do not protect plaintiffs or their class from the infliction of summary punishment or illegal arrest and detention. *See, e.g., NAACP v. Thompson*, 357 F. 2d 831, 838 (5th Cir), *cert. denied*, 385 U. S. 820 (1966). At most, such actions attempt to provide after the fact "compensation." Moreover, the burden of attempting to deter such abuses should not be placed on the victim. It is no comfort to a citizen to know that although the police may unlawfully

90. *See* Brief for the American Civil Liberties Union et al. as *Amici Curiae* at 39-40 n. 61.

91. Testimony of Mercer D. Tate, *Goode* Record 658.

92. Testimony of Bernard L. Segal, *COPPAR* Record 914; *cf.* Testimony of Professor Louis B. Schwartz, Goode Record 302; Mary Blackwell, A 96a, 357 F. Supp. at 1305.

93. *Lewis v. Kugler*, 446 F. 2d 1343, 1350 (3d Cir. 1971) ["[I]t can no longer be seriously contended that an action for money damages will serve adequately to remedy unconstitutional searches and seizures." (footnote omitted)]; *Lankford v. Gelston*, 364 F. 2d 197, 202 (4th Cir. 1966); *cf. Danielson v. Local 275, Laborers Int. U. of N. Amer.*, 479 F. 2d 1033, 1037 (2d Cir. 1973) ("Irreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate").

detain and physically abuse him today, he can hire a lawyer, pursue his case in the courts for several years and possibly recover monetary damages in the future for the denial of rights he suffered. Even if he has the initiative and resources to seek such relief, he cannot be assured that his efforts will prevent him from being subject to a similar attack on his rights in the future.

In contending that such remedies are adequate and preclude injunctive relief by the federal courts, defendants have demonstrated the type of callous disregard for individual rights and indifference to their own obligations to prevent violations of these rights about which these actions complain. For isolated instances of violation of constitutional rights where there is no threat of recurrence, damage actions may provide the only possible relief. However, where, as here, the court has found a pattern of recurrent violations of rights by police and systematic indifference thereto by supervisory personnel, the concern must be with preventing such violations in the future by eliminating the causes, a result the remedies at law proposed by defendants are unable to accomplish.

C. The Relief Granted Was Consistent With the Public Interest.

The public interest requires that the police both enforce and observe the law with equal vigor. The relief ordered by the District Court protects both of these interests. By requiring the establishment of procedures for adequately reporting, investigating and disposing of citizen complaints against the police, the final judgment provides an effective method for holding police accountable for violations of citizens' rights. By requiring that these procedures be implemented by the police themselves, the final judgment minimizes any intrusion into law enforcement operations.

Defendants suggest that the relief ordered will result in police officers being reluctant to properly enforce the law for fear of being hauled before the Police Board of Inquiry for mistakes of judgment or "petty annoyances" to citizens (Pet. Br. 34-35). This argument overlooks the fact that the Police Board of Inquiry is composed solely of police officers. Moreover, it is only an advisory board; the ultimate responsibility for decisions in cases brought before the board remains with the police commissioner. The relief ordered involves no change either in the standards which should be applied in determining whether police conduct is proper or in the people who are to decide if those standards have been violated. Police are judging police. An officer who is performing his job properly need not be concerned that someone unfamiliar with the nature of his job will evaluate his conduct. To the extent that concern about possible disciplinary proceedings deters an officer from performing his job improperly, the relief ordered is simply accomplishing the result which it was designed to achieve.

Neither the police nor the public has an interest in the perpetuation of the pattern of police misconduct found by the District Court to exist in Philadelphia. Faced with the obligation to provide effective relief, the District Court fashioned a limited and moderate remedy directed at reducing police abuse of citizens' rights. The District Court properly and effectively exercised its discretion in framing appropriate injunctive relief.

CONCLUSION.

The judgment of the Court of Appeals for the Third Circuit with respect to the grant of injunctive relief should be affirmed, and the case remanded to the District Court for proceedings consistent with the opinion of the Court of Appeals.

Respectfully submitted,

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